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# Vol. I

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1935

## No. 403

GEORGE ASHWANDER ET AL., PETITIONERS,

*vs.*

TENNESSEE VALLEY AUTHORITY ET AL.

## No. 404

GEORGE ASHWANDER ET AL., PETITIONERS,

*vs.*

TENNESSEE VALLEY AUTHORITY ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 28, 1935.

CERTIORARI GRANTED OCTOBER 14, 1935.

# TRANSCRIPT OF RECORD

## UNITED STATES CIRCUIT COURT OF APPEALS

### FIFTH CIRCUIT

No. .....

TENNESSEE VALLEY AUTHORITY, ELECTRIC HOME AND FARM AUTHORITY, INC., ARTHUR E. MORGAN, HARCOURT A. MORGAN, DAVID E. LILIENTHAL and CITY OF FLORENCE, ALABAMA, a Municipal Corporation,

Appellants,

vs.

GEORGE ASHWANDER et al.,

Appellees.

Appealed from the District Court of the United States for the Northeastern Division of the Northern District of Alabama.


JAMES LAWRENCE FLY,
General Solicitor, Tennessee Valley Authority, and
WILLIAM C. FITTS, JR.,
Knoxville, Tennessee,
Attorneys for Appellants, Tennessee Valley Authority, Electric Home and Farm Authority, Inc., Arthur E. Morgan, Harcourt A. Morgan and David E. Lilienthal.

WILLIAM H. MITCHELL,
Florence, Alabama,
Attorney for Appellant, City of Florence.

CABANISS & JOHNSTON,
FORNEY JOHNSTON and
JOSEPH F. JOHNSTON,
Birmingham, Alabama,
Attorneys for Appellees, George Ashwander et al., Plaintiffs.

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**TRANSCRIPT OF THE RECORD**
**from the Circuit Court, Eighth Judicial Circuit of Alabama,**
**In Equity.**

Filed October 8th, 1934. W. S. Lovell, Clerk.

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**In the**

**CIRCUIT COURT FOR THE**
**EIGHTH JUDICIAL CIRCUIT OF ALABAMA**

---

GEORGE ASHWANDER, WM. M. BROWDER, A. C. GARBER, JOSEPH R. COOK, JR., BESSIE M. GRAY, C. H. GRAY, CLIFFORD L. LAMAR, MARY P. LONDON, F. W. MURRAY, EUGENE C. MORGAN, JOSEPH A. NORMAN, C. L. TORBERT, R. H. WOODROW, TUTWILER INVESTMENT COMPANY, A CORPORATION,
Complainants,

vs.

TENNESSEE VALLEY AUTHORITY, ET ALS.,
Respondents.

} In Equity.

---

To the Judges of the Circuit Court in and for the Eighth Judicial Circuit of Alabama, in Equity:

The bill of complaint of George Ashwander, Wm. M. Browder, A. C. Garber, Joseph R. Cook, Jr., Bessie M. Gray, C. H. Gray, Clifford L. Lamar, Mary P. London, F. W. Murray, Eugene C. Morgan, Joseph A. Norman, C. L. Torbert, R. H. Woodrow, and Tutwiler Investment Company, on behalf of themselves and all other preferred stockholders of the respondent Alabama Power Company, against the said Alabama Power Company,

Tennessee Valley Authority, Electric Home & Farm Authority, Inc., Chemical Bank and Trust Company, as Trustee, Guaranty Trust Company of New York, as Trustee, Arthur E. Morgan, Harcourt A. Morgan, and David E. Lilienthal; also the following municipal corporations of the State of Alabama, viz, Town of Ardmore, City of Athens, Town of Austinville, Town of Cherokee, Town of Courtland, Town of Elkmont, City of Decatur, Town of Falkville, City of Florence, Town of Hartselle, Town of Leighton, Town of Moulton, Town of Red Bay, Town of Rogersville, City of Russellville, City of Sheffield, Town of Town Creek, and City of Tuscumbia; represents as set out below.

As to all statements of fact herein other than the averments as to complainants and their ownership of stock, complainants have, through a protective committee acting for complainants and other stockholders in the protection of their rights in the premises and otherwise, made investigation and have been informed and believe that the facts herein stated are true and upon such information and belief complainants aver that they are true.

[1]

(1) The parties complainant to this bill of complaint are enumerated below. All of the individual complainants are over the age of twenty-one years, residents of Alabama and owners of preferred capital stock of the Alabama Power Company as follows:

| Name | Residence | Preferred Stock Class | Preferred Stock No. of Shares |
|---|---|---|---|
| George Ashwander..... | Cullman County.. | 6% | 401 |
| Wm. M. Browder..... | Hale County..... | 7% | 50 |
| | | 6% | 10 |
| A. C. Garber and Joseph R. Cook, Jr.. | Jefferson County. | 6% | 10 |
| Bessie M. Gray..... | Jefferson County. | 7% | 35 |
| C. L. Gray..... | Cullman County.. | 6% | 25 |
| Clifford L. Lamar..... | Jefferson County. | 6% | 55 |
| Mary P. London..... | Jefferson County. | 7% | 200 |
| | | 6% | 55 |
| F. W. Murray..... | Jefferson County. | 6% | 4 |
| Eugene C. Morgan..... | Jefferson County. | 7% | 19 |
| | | 6% | 16 |
| Joseph A. Norman..... | Jefferson County. | 6% | 100 |
| C. L. Torbert..... | Chambers County | 7% | 4 |
| | | 6% | 20 |
| R. H. Woodrow..... | Jefferson County. | 6% | 25 |

Complainant Tutwiler Investment Company is a corporation of the State of Alabama having its principal office in Jefferson County, Alabama, and is the owner of 56 shares of the 7% Preferred Stock of respondent Alabama Power Company.

Complainants have been and are the registered and/or beneficial owners of their said respective holdings of said shares from a time antedating the matters complained of in this bill of complaint, having acquired said shares directly or through their transferors for investment for a valuable consideration.

(2) This is a suit brought on behalf of complainants and all other preferred stockholders of Alabama Power Company who may join herein and share the costs of the suit, to restrain, redress or avoid the effect of certain unlawful or wrongful acts done or threatened resulting

in or threatening damage and injury to the Alabama Power Company and to complainants and other holders of preferred stock of that corporation, hereinafter more particularly averred, and, to that end, to restrain or limit sundry acts proposed or threatened by the respective respondents, hereinafter specified. A principal basis of the suit is to prevent abandonment and loss of franchises and properties of Alabama Power Company and its participation in or furtherance of the unlawful or wrongful acts or program of Tennessee Valley Authority herein complained of; to relieve Alabama Power Company of effective duress wrongfully asserted by said Tennessee Valley Authority in pressing its said unlawful or wrongful program to the damage and injury of Alabama Power Company and to relieve Alabama Power Company of unfair competition by Tennessee Valley Authority and those associated with it through the unlawful use of federal funds, through arbitrary action and otherwise, all as more specifically complained of herein.

(3) The name, status, and residence of the respective parties made respondents to this bill of complaint are as follows:

(a) Alabama Power Company is a corporation of the State of Alabama, with its principal business office in Jefferson County, Alabama, engaged in the manufacture of electricity by hydro-electric

[2]

and steam plants and in the transmission and distribution thereof as a public utility generally throughout the State of Alabama and rendering service in each and every county thereof except Pike and Conecuh.

(b) The Tennessee Valley Authority, herein sometimes called TVA, is a body corporate created by an Act of Congress approved May 18, 1933, known as the Tennessee Valley Authority Act of 1933, herein sometimes referred to as the Act (Public No. 17, 48 Stat. 58; Title 16, U. S. C., Sec. 831, et seq.), with its principal office established by said Act in the vicinity of Muscle Shoals in the State of Alabama, and declared by the Act to be an inhabitant and resident of the Northern Federal Judicial District of Alabama within the meaning of the laws of the United States relating to venue of civil suits and further declared by said Act to be subject to suit.

Said TVA is doing business by agent within the State of Alabama within the meaning of Section 232 of the Constitution of Alabama (1901) in each of the Counties mentioned in sub-division (e) of this Section (3), is a corporation not organized under the laws of Alabama within the meaning of Section 7209 of the Code of Alabama. TVA has not filed with the Secretary of State of Alabama its articles of incorporation, nor an instrument designating an agent for service, nor has it paid any tax or filed any statement or obtained permit as a corporation not created under the laws of Alabama as required by Sections 7214, 7215, and 7218 of the Code of Alabama as a condition precedent to the transaction of local business in Alabama.

Many of the acts and transactions of said TVA within the State of Alabama constitute doing business that is not governmental or national in character and is not interstate commerce or essential or necessary to the discharge of any constitutional federal function, being in the nature of private or proprietary business or transactions within the meaning of the decision in **Ohio v. Helvering**, U. S.

Supreme Court, May 21, 1934, 78 L. Ed. 911. Among other proprietary activities of said TVA are the following:

1. The conduct of or acts and contracts within Alabama looking to the operation of an intra-state utility business and the acquisition of property to that end;

2. The construction or acquisition of facilities for the production, transmission and delivery of electricity, including intra-state utility distribution;

3. Promotion of public (municipal) ownership and operation of utilities in Alabama;

4. Promotion and financing of the sales of electric appliances throughout Alabama.

5. Solicitation of the location of industries within the utility service area of TVA through the offer of power rates which Alabama Power Company could not meet without discrimination against other industries or areas served by the Power Company and in violation of the established public policy of Alabama.

In respect of all of these proprietary functions TVA has publicly disclaimed and denied any obligation or intention to comply with the laws of Alabama requiring qualification of corporations not created under the laws of Alabama or with the utility laws of that state or to pay taxes or licenses on or in respect to any of its said proprietary businesses, properties and transactions, and is in respect thereof doing business in the State of Alabama in

[3]

systematic violation of the laws of Alabama including, inter alia, Sections 7209, 7211, 7214, 7215, 7216, 7218, 7219, 7220; Section 54 of the Revenue Act of 1927 (Acts 1927, p. 176), as well as the various provisions of State law relating to utilities, including, inter alia, Sections 9763, 9765, Act No. 232, approved Nov. 9, 1932, 9771, 9779, 9786, 9787, 9788, and 9795, of the Code of 1923.

For the reasons aforesaid the proprietary contracts of TVA within and relating to the acquisition of property or other local transaction in the State of Alabama were and are void.

(c) Arthur E. Morgan, Harcourt A. Morgan, and David E. Lilienthal, are over the age of twenty-one years, are the three chief executive officers and the sole members of the corporate authority of TVA known as its board of directors, which is by said Act charged with the duty of directing the exercise of all of the powers of that corporation.

As directors of TVA they hold and exercise power to vote all of the capital stock of and are also the sole directors and are executive officers of the corporation of the State of Delaware hereinafter mentioned, known as Electric Home & Farm Authority, Inc.

They are sued in their respective individual capacities and also in their joint and several capacities as officers and directors of and constituting the governing boards of said TVA and Electric Home & Farm Authority, Inc., respectively.

The said Tennessee Valley Authority Act provides that no member of the board of TVA shall be engaged in any other business, that each member shall devote himself to the work of the Corporation and, as aforesaid, that the Corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. Said respondents are temporarily domiciled at Knoxville, Tennessee, but whether that is claimed by them as their legal residence, in view of the provisions of said Act above mentioned, complainants are not advised.

(d) Said Electric Home & Farm Authority, Inc., herein sometimes referred to as EHFA, is a corporation of the

State of Delaware organized under the circumstances more fully stated hereinafter. Said corporation is doing business by agent or through agencies within the State of Alabama, and on, to wit, June 14, 1934, qualified for the transaction of local business in Alabama as a foreign corporation, and designated a resident agent for service.

(e) The municipal corporations above named, to-wit, Town of Ardmore, City of Athens, Town of Austinville, Town of Cherokee, Town of Courtland, City of Decatur, Town of Elkmont, Town of Falkville, City of Florence, Town of Hartselle, Town of Leighton, Town of Moulton, Town of Red Bay, Town of Rogersville, City of Russellville, City of Sheffield, Town of Town Creek, and City of Tuscumbia, are all municipal corporations of the State of Alabama, located within six counties of the State of Alabama, viz: Colbert, Franklin, Lauderdale, Lawrence, Limestone and Morgan.

[4]

By contract dated May 21, 1934, EHFA established Alabama Power Company as an agent in carrying on its business throughout Alabama and said agent has been and is now discharging its functions as agent under said contract.

(f) Chemical Bank and Trust Company is a corporation of the State of New York, and is sued in its capacity as successor Trustee under a Mortgage and Deed of Trust from the Alabama Power Company to the United States Mortgage and Trust Company as Trustee dated March 1, 1916, and also in its capacity as successor Trustee under a Mortgage and Deed of Trust from Alabama Power Company to United States Mortgage and Trust Company dated June 1, 1921.

(g) Guaranty Trust Company of New York is a corporation of the State of New York, and is sued in its capacity as Trustee under Mortgage and Deed of Trust from Alabama Power Company to Guaranty Trust Company of New York dated December 1, 1926.

(4) Alabama Power Company is a public utility engaged in the sale of electricity, qualified and operating generally throughout the State of Alabama, having, according to its reports on file with the Commission, an investment in plant and equipment of approximately $179,811,986.07, consisting of hydro-electric generating plants having an installed capacity of 583,000 h. p.; steam generating plants having an installed capacity of 217,170 h. p.; 3,592 miles of high tension transmission lines, 3,860 miles of distribution lines and all equipment and facilites necessary for use in generating, transmitting, distributing, metering and delivering electric energy to meet the demands of all its electric consumers in the State of Alabama. The Company is now serving 97,380 direct customers, the aggregate of whose demands are 519,000 h. p. and has an actual installed capacity of 54 percent. in excess of its present demand.

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Included in the number of customers which the company is serving directly are municipalities and other distributing companies owning their own systems which in turn serve 83,000 customers making a total of 180,380 customers served directly and indirectly by the Power Company. That Company serves present demands, and is fully equipped, prepared and ready to serve all reasonable future demands in the area of its undertaking or to which its service may be required to be extended, with a con-

tinuous and uninterrupted supply of electric energy. Its services, together with its rates which are statewide in their application, are regulated by the Alabama Public Service Commission. Its property is situated in or its services extend into sixty-six out of the sixty-seven counties in the State, being all of the counties of Alabama except Pike County.

The cost of its plant and equipment is reflected in its balance sheet by capital issues now outstanding as follows:

**Bonds:**

| | |
|---|---|
| Five percent bonds, maturing at intervals between March 1, 1946 and Sept. 1, 1968 | $48,921,000.00 |
| Four and one-half percent. mortgage bonds maturing December 1, 1967 | 47,990,000.00 |
| Municipal issues assumed | 16,800.00 |
| Total bonds | $96,927,800.00 |

**Capital Stock—Non Par Value:**

| | |
|---|---|
| Preferred Stock outstanding: | |
| $5 Series— 26,185 shares | 2,553,037.50 |
| $6 Series—175,767 shares | 16,913,784.24 |
| $7 Series—165,255 shares | 16,287,227.11 |
| Common Stock—3,775,000 shares | 48,961,300.00 |
| Total stocks | $84,715,348.85 |

All the foregoing bonds and preferred stock (except $10,221,000 bonds and $461,500 stock issued prior to the effective date of the Alabama Public Utility Act of November 1, 1920) were issued and sold under orders of the Alabama Public Service Commission authorizing the same, fixing the minimum selling price and requiring a report of the disposal of the securities and of the application of the proceeds thereof to be filed with the Commission. The common stock was issued over a period of years, all with

the consent and approval of Alabama Public Service Commission, except the issue of 1913 in the amount of $18,751,000.00.

The shares of the preferred stock of said company are widely held throughout Alabama and other States, there being a total of approximately 11,750 shareholders who reside within the State of Alabama.

The Power Company had a gross revenue from operations for the last calendar year of $14,964,443.32. Its present rates have been approved by Alabama Public Service Commission, and have been publicly characterized by said TVA respondents in its appliance sale propaganda as "cheap" or "low" rates, approved as reasonable and as sufficiently low to warrant acceptance for the TVA-EHFA appliance financing program, hereinafter mentioned, throughout the area served by the Power Company.

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The Power Company's schedule of residential rates was, moreover, specifically approved by said TVA in that by Section 17 of the joint power company contract of January 4, 1934, with TVA, hereinafter mentioned, the Tennessee Electric Power Company was required by TVA to file with the Railroad and Public Utilities Commission of Tennessee a schedule of domestic service rates coinciding with those of the Power Company.

(5) The legislature of Alabama heretofore enacted the Public Utility Act of 1920, effective November 1, 1920, Section 49 of which is now contained in the Code of 1923 as Section 9795 as follows:

> "9795. **Certificate of Convenience and Necessity.**—No plant, property or facility for the production, transmission, delivery, or furnishing of gas, elec-

> tricity, water or steam, and no street or interurban railway shall be constructed except ordinary extensions of existing systems in the usual course of business [and no jitneys within the jurisdiction of the commission licensed], until written application is first made to the Commission for the issuance of a certificate of convenience and necessity, for the issuance by the commission of such certificate. Upon the filing of any such application, and after a public hearing of all parties interested, the commission may or may not in its discretion, issue such a certificate of convenience and necessity, and if issued, may prescribe such conditions upon the issuance as it may deem advisable." (Matter in brackets added upon adoption of Code of 1923).

Certificates of Convenience and Necessity were granted by the Alabama Public Service Commission for all the foregoing plants and facilities and transmission lines which have been constructed since November 1, 1920; such certificates including within their terms the erection of the necessary power houses, substations and equipment for the manufacture, supply and sale of power to the public. Like certificates were also granted for the acquisition of all other properties and facilities except ordinary extensions in the usual course of business, for which such certificates were requested as required by law since November 1, 1920.

Aside from any other consideration or legality herein set out, its constructive history, its progressive reduction in rates, its effective industrial development program, its successful effort to decentralize industry (threatened with nullification by the discriminatory program of TVA), its present rates and the modern and efficient plant and reliable service of Alabama Power Company make punitive yardstick regulation, competitive duress and seizure of market and service area by TVA as to the Alabama Power

Company as complained of herein, a program that is arbitrary, punitive, and without justification or valid basis.

(6) Included in the properties of Alabama Power Company are the transmission lines, easements, franchises, distribution systems and other properties described or referred to on Exhibit No. 1 hereto attached and made a part hereof.

All of the fixed properties of Alabama Power Company, including the items described and referred to on said Exhibit No. 1, are subject to the liens of the several mortgages and deeds of trust referred to in subdivisions (f) and (g) of Section 3 of this bill of complaint, all of said instruments being of record in the counties in which the respective items of property are situated.

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(7) The stock control of Alabama Power Company rests in The Commonwealth & Southern Corporation, herein called Commonwealth & Southern, a top or holding corporation of the State of Delaware, not doing business or subject to service in Alabama, owner of all of the common stock (3,775,000 shares) of Alabama Power Company, carrying equal voting power, share for share, with the 367,207 shares of its preferred stock outstanding. Said preferred stock was issued and sold at from $93 to $102 per share for cash.

(8) Commonwealth & Southern controls the following operating utilities doing business in the states of their respective names: Alabama Power Company, Georgia Power Company, South Carolina Power Company, Tennessee Electric Power Company, Mississippi Power Company, and other operating properties. Its executive of-

ficers and management actively concern themselves with the general policies of the operating utilities stated and through complete corporate control in fact dominate the policies and all important action of the operating companies.

The action and non-action of the Alabama Power Company and its Board of Directors herein complained of has been and is controlled by said Commonwealth & Southern Corporation. The basic agreement with TVA dated January 4, 1934, herein mentioned (Exhibit No. 5) was substantially negotiated and approved by Executives of Commonwealth & Southern before submission to the Power Company. Complainants do not aver that said Commonwealth & Southern Corporation interferes with Alabama Power Company in respect to matters of current operating detail, but does dominate and control in so far as matters of fundamental policy are concerned or matters of the character of the transactions complained of in this bill of complaint.

The adverse bearing of the contract of January 4, herein complained of, does not fall as heavily on Commonwealth & Southern as to certain other of its controlled properties which participated in the agreement as upon the Alabama Power Company; for instance, as to Georgia Power Company, whose service area was not substantially invaded; nor was it forced to sell its utility properties or forced to yield its franchises or to submit to the destructive effect of the subnormal TVA schedules forced on the Alabama Power Company by that contract. Said Commonwealth & Southern has, accordingly, by said contract at least temporarily salvaged or reprieved its Georgia service and interests against competition from TVA, at the cost of the immediate sacrifice of Alabama Power Company threatened by the contract and, in other respects,

has interests in the matter contrary to the interests of stockholders solely interested in the Alabama Power Company. Said Commonwealth & Southern Corporation, as well as the Alabama Power Company, were and are in practical effect subjected to duress in the negotiation and similarly with respect to the execution of the agreement.

(9) The Tennessee Valley Authority project as planned and in process of aggressive execution and public exploitation by TVA is one of a group of power projects advocated by the present Executive during the Presidential Campaign of 1932 (Portland Address):

> "* * * Where a community * * * is not satisfied with the service rendered or the rates charged by the private utility, it has the undeniable right as one of its functions of government * * * to set up * * * its own governmentally owned and operated service. * * * The fact that a community can, by vote of the electorate, create a yardstick of its own, will, in most cases, guarantee good service and low rates to its population * * * 'a birch rod in the cupboard.'
>
> "That is the principle that applies to communities. I would apply the same principle to the Federal and State Governments."
>
> * * * * * * * * *

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> "Here you have the clear picture of four great government power developments in the United States, the St. Lawrence River in the Northeast, Muscle Shoals in the Southeast, the Boulder Dam project in the Southwest, and, finally, but by no means the least of them, the Columbia River in the Northwest. Each one of these will be forever a national yardstick to prevent extortion against the public and to encourage the wider use of that servant of the people—electricity,"

further elaborated by the President elect in a press interview at Warm Springs on February 2, 1933, "as probably the widest experiment ever conducted by a government," and specifically urged on Congress by the Executive Message of April 10, 1933, a copy of which, for convenience of reference is attached as Exhibit No. 2.

(10) A basic object of the TVA program is the exclusive development and permanent ownership by the federal government of all potential water power on the Tennessee and its tributaries without recognition of the sovereign right and duty of the States in and as to the bed and stream and potential water power of the rivers within the boundaries of the several states, for the purpose and with the necessary effect and tendency to effectuate the following objectives:

1. As a means of directly controlling or regulating rates for, policies and methods of distributing electricity to ultimate consumers within the Tennessee Valley area or other area selected by it for distribution; also as an alleged yardstick for controlling and establishing the reasonableness of rates to consumers both in said area and elsewhere in the United States, by dictating or controlling the utility rates in the selected area.

2. The conduct of the proprietary business of selling electricity intentionally to be produced to the capacity of the dams, vastly in excess of any requirement of navigation or existing or potential market for the resulting energy, at prices lower than the rates of regulated utilities serving the area, free from regulation or control by the States, in destructive competition, if necessary to take their market, with existing utilities regulated by the State and serving the area.

3. As a means for exploiting and furthering public ownership of utilities.

4. As a means for furthering domestic and rural

use of electricity by preference over industrial use, except as a load stabilizer, without reference to any contrary or current internal public policy or police power of the State.

This program for the development and distribution of power has come to be known generally as the President's "yardstick" program and was developed or elaborated by the President, while Governor of New York, adopted by the Legislature of that state and approved by him (Ch. 772, Laws of 1931) as a state function in connection with the anticipated improvement of the St. Lawrence. The State of New York asserted under that (St. Lawrence) program an inalienable, sovereign right to develop and dispose of the potential water power subject to development in the course of or in connection with improvement of commerce and navigation, as a clearly separable function of the proposed improvement, disclaiming any conflict or interference with federal powers as to improvement of navigation and denying the right of the federal government to recapture or impose regulations upon the disposition of the power,

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whether pursuant to license by Federal Power Commission or otherwise. Its uniform position on this principle was stated on behalf of the State of New York by Hon. Charles E. Hughes, retained as special counsel to that end, by letter dated December 4, 1925:

"It is the position of the Attorney General of New York that neither the Congress nor your Commission has constitutional authority to provide in the manner contemplated for the recapture, taking over, maintenance and operation of the projected works under consideration, situated wholly within the State of New York, and devoted to the development, use,

furnishing or sale of power within that state, simply because they constitute water development and without regard to proper federal purposes and compliance with constitutional requirements."

Tentative agreement has been reached on behalf of the federal administration and the State of New York by which the latter's right to take over the power development and control it as a state function is to be recognized. This arrangement has been reported favorably by House Committee on Interstate and Foreign Commerce, adopted by the House of Representatives and has the full approval of the Administration. (H. J. Res. 157, 73rd Cong. 1st Sess., passed without amendment April 26, 1933; Cong. Rec. p. 2441; Report No. 49, April 20, 1933; Joint Memorandum U. S. Engineers and New York Power Authority, February 7, 1933).

In short, this program of the State of New York by definition and necessary constitutional limitation related to power. That program, notwithstanding its inherent characteristic as a state function, a power function as an incident of State sovereignty and ownership and not a function of navigation, was lifted into the Federal program of the Executive for the TVA project without attempt to modify it to conform to the Constitution of the United States.

Notwithstanding the limitations imposed by that instrument the program has been consistently pressed by the Executive as a power program and as such is being administered by the TVA as complained of herein, through the directors of that corporation appointed by and subject to removal by the Executive.

Denial by respondents that the project is primarily a power project would be so lacking in foundation as to be in bad faith.

"As you know, I have advocated the development of four great power areas in the United States, each to serve as a yardstick and each to be controlled by government or governmental agencies. The Tennessee Valley plans and projects in the Southeast, the Boulder Dam on the Colorado River in the Southwest, the Columbia River projects in the Northwest are already under construction. The St. Lawrence development in the Northeast calls for action." (The President's St. Lawrence Treaty Message, Sen. Doc. 110, January 10, 1934.)

The navigability of the Tennessee River, according to the program of the Corps of Engineers formally approved by Congress, could be accomplished by a series of low dams from its junction with the Ohio to Knoxville at a cost of seventy-five million dollars, a minor fraction of the cost of the vast power program of TVA.

The program in detail, the public announcements and releases of TVA, fairly illustrated by the excerpts on Exhibits Nos. 3 and 4, hereinafter mentioned, the official characterization of the program by the President, warrant the unconditional averment that the program as formulated and being administered as herein complained of is primarily and has as a dominant objective a power generation and distribution program, utility in type and controlled by TVA.

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A further basic element in the Executive (TVA) program having no remote relation to navigation was and is the so-called "planned economy," for which the Tennessee Valley drainage area was selected by the Executive for the first experiment, his characterization of the experiment as "probably the widest experiment ever conducted by a government" being accepted in all of its implications by TVA from its Chairman (A. E. Morgan, House Hearings, May

21, 1934, p. 167, quoting the President's expression to the effect that the program "touches and gives life to all forms of human concerns" to its field propagandists.

To carry out this program and its several elements Congress was requested by the Executive (Exhibit No. 2) to create a Tennessee Valley Authority as a corporation "clothed with the power of government but possessed of the flexibility and initiative of a private enterprise," with the duty of planning for the use, conservation and development of the Tennessee basin and its adjoining territory "for the general social and economic welfare of the nation," and also to be "clothed with the necessary power to carry these plans into effect."

This request was indisputably for a delegation not only of an entire field of legislative discretion, policy, function and power, which, if possessed by Congress as to the subject matter at all, could not in its totality be delegated, but also by reason of its unlimited and undefined scope, reached into the field of powers not within the function of Congress to exercise either directly or by delegation and plainly reaches into the domain reserved to the States and to the people.

The powers requested were so lacking in legislative certainty as, if granted by the Act, to be inherently invalid on that ground, as well as on the ground of violation of Section 1 of Article I of the Constitution providing that "all legislative powers shall be vested in a Congress of the United States"—and not in corporations "possessed of the flexibility and initiative of a private enterprise," to plan **and to execute a plan** for the "general social and economic welfare of the Nation."

Notwithstanding the foregoing considerations, respondents TVA and its said officers are administering the affairs

of TVA in the respects herein complained of substantially as if the Act, as actually adopted, conformed in all material respects to the Executive request and program, described as aforesaid.

> "'The whole significance of the TVA Act is, as the President says, **to take action** * * * toward putting some order and design into the economics of that community as a typical case of regional planning.'' (A. E. Morgan, House Hearing, May, 1934)
>
> "* * * the provisions of the Act, together with the declarations of the President of the United States, required the Authority (TVA) to establish a yardstick'' etc.
>
> (Lilienthal and Morgan, in negotiations with Commonwealth & Southern).

Quoting the President's basic definition of the program as one which "touches and gives life to all forms of human concerns," the official bulletin of TVA describing its functions proceeds: "It is upon such a program that the Tennessee Valley Authority is launched." (U. S. Gov't. Printing Office, 1934).

Congress reacted to the Executive request by the adoption of the TVA Act, by which is grafted upon previous joint resolutions adopted by Congress relating to the operation of the Muscle Shoals plant (S. 46, which lapsed for lack of approval by Mr. Coolidge,

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and S. 49, vetoed by Mr. Hoover) sufficient provisions or features of the Executive program to bring the Act as passed, both as a whole and in material aspects, in conflict with the Constitution in the respects herein averred.

This was accomplished, to specify a single aspect of the

conflict with the Constitution, by applying to Muscle Shoals and all the power projects covered by the Act, supposedly federal projects, the exact declaration of utility policy used in the Power Authority Act of the State of New York (Ch. 772, Laws of 1931) in defining a State function, which is the necessary converse and antithesis of federal function:

> "in the development of hydroelectric power therefrom, the said project shall be considered primarily as for the benefit of the people of the State as a whole and particularly the domestic and rural consumers, to whom the power can economically be made available, and accordingly that sale to and use by industry shall be a secondary purpose to be utilized principally to secure a sufficiently high load factor and revenue returns which will permit domestic and rural use at the lowest possible rates and in such manner as to encourage increased domestic and rural use of electricity;"

also by providing for a vast increase in the power to be generated at Muscle Shoals in excess of that required for navigation by a mandatory provision (Section 17) requiring that the design for Cove Creek Dam shall be such as to produce the maximum potential power at Muscle Shoals and intermediate dams. This mandatory excess required by the statute is being still further increased by the construction of a hydro-electric plant at Wheeler Dam undertaken by TVA under the circumstances hereinafter averred.

The New York Act, constituting a specific attempt to exert the reserved proprietary authority of that State as to power, provided for sale of that power to public subdivisions, and to utilities subject to contract in order **"to carry out the policy of securing domestic and rural use at the lowest possible price,"** a declaration of public policy of New York as to power distribution in that State.

Under the dual system of American government, there

can be no concurrent jurisdiction as to the dominant policy of distribution of electric power. That function, as to intra-state commerce, is a state function and not a federal function.

The quoted expressions of purpose and policy thus lifted from the New York Act were inappropriate and unwarranted as to the federal government and in themselves, by context and origin, make plain that the basic purpose and policy of the Act was the development and distribution of power, under and to give effect to a policy to be imposed by the federal government throughout the area of its distribution as to all projects authorized by the Act, and as an integral program. Complainants aver that this program in its entirety was and is beyond any proper function of the federal government.

(11) As to the social or economic planning as to which the Executive Message (Exhibit No. 2) requested unlimited power both to plan and to execute, the President was by said Act, if lawfully authorized to take any action whatever, authorized merely to make studies, surveys and plans and report same to Congress for its further consideration. Having been delegated with all of the authority of the President as to such matters by Executive Order No. 6161 (June 8, 1933) TVA, its officers, agents and agencies, have

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interpreted and are executing the Act as though it conferred the unlimited power requested in the executive message, and in the "yardstick" and "planning" or "all human concerns" program of the Executive herein mentioned.

That program was and is in its entirety, by reason of the inseparability of its parts and the integral plan of the

whole, unauthorized and not within the power of Congress to authorize. The direct and proximate result of that program, if permitted to be executed in the respects herein complained of, will be the loss in whole or in part of the franchises, business and revenues of the Alabama Power Company and permanent impairment of the value of its capital stock, demoralization of its business, discrimination against its customers and its service area and serious impairment of its good will.

(12) The violation of federal function in the TVA program was definitively and indisputably stated by TVA in its public announcement of its power policy as of August 25, 1933, a copy of which is attached hereto marked Exhibit No. 3 and made a part hereof.

Since that date, the immediate aspects of the program have taken in excessive additions to power, including the immediate construction of the Wheeler Dam hydro-electric plant, direct acquisition and operation of utility distribution systems, direct promotion of appliance sales (through EHFA) and the various elaborations of promotional and other details elsewhere referred to herein.

(13) Fairly representative of the scope and pattern of the TVA program, as elaborated, and its systematic transgression of Constitutional limitations are the statements of its purpose and object as taken from its press or official releases, where not otherwise indicated, or from its forms of agreements which are noted on the exhibit hereto attached and made a part hereof, marked Exhibit No. 4, and which are in fact characteristics of the program.

(14) That unlawful regulation of utility rates was a primary purpose of the Act rests not merely upon the

acknowledgment of the TVA respondents (Exhibit No. 3) but affirmatively appears from the Act itself, and is emphasized and made indisputable by the administration of the program by TVA.

(a) The Tennessee Valley Act (Section 12) requires TVA to establish for sales by utility distributors of TVA power "a schedule fixed by its Board from time to time as reasonable, just and fair." This proposes a direct regulation of such rates. Regulation of the resale price has no reasonable relation to navigation or any lawful federal function.

By extending enormously the available power in the area in excess of any existing or potential market and by forcing that excess on the market directly and through controlled distributors the result is and will be substantial domination and control of electric power distribution by TVA in any area in which its power is distributed or has competitive bearing, either directly or through potential or threatened capture of industries. Such domination of the business is not a legitimate federal function.

(b) In the forms of contracts with municipalities adopted as standard by TVA, broad power of regulation is attempted to be reserved to TVA, a purpose directly in conflict with the power of the States, constituting a direct effort to dominate a public function of a subdivision of the State itself in violation of the Constitution, and in violation of Section 12 of the TVA Act which does not purport to authorize any such intrusion or regulation by TVA in respect to public agencies.

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The respondent municipalities are proposing and will, unless restrained, enter into contract with TVA with said provisions in the agreement and thus directly further the program of monopolistic control and regulation of rates and competition proposed by TVA. So far as concerns affirmative action, said provisions are contrary to the public policy of the State

of Alabama and void; but their inclusion in the proposed agreements, carrying right of termination by TVA, places the matter of public service in confusion and jeopardy, constitutes a material provision in the proposed standard form of agreement which is, accordingly, contrary to public policy. These proposed agreements form the basis of the pending effort of TVA and the municipal respondents to force Alabama Power Company out of the area involved.

(c) Section 11 of the TVA Act, purporting to establish a public policy as between urban, rural and industrial rates and preferences is in like manner contrary to the public policy of the State of Alabama. That public policy is that the question of emphasis as between the stated classes of service be left open for determination by the State agency designated from time to time to deal with the question or be reserved to the legislature. The policy of Section 11 of the Act, declaring that industrial schedules be subordinated to domestic and rural service, is embodied in the standard municipal contract of TVA. By accepting that contract the direct tendency would be to defeat the public policy of the State of Alabama, which is that the question be left open for determination by regulatory agencies in Alabama upon an economic basis. Although the State would have the right to control its subdivisions, the latter would be, in fact, helpless to distribute electricity for which the town is dependent upon the contract, in violation of the contract or to retain or operate a system held subject to the covenants of the agreement of sale, in violation of that agreement.

(15) The long tenure of office of the directors, their access (with the approval of the President) to unlimited emergency appropriations, aggregating approximately nine hundred million dollars for the current fiscal year 1935 (Act No. 412, 73rd Congress, Title II) in addition to the first appropriation of fifty million (Act No. 77, 73rd Congress) and the right to issue bonds for a like amount, enables this corporation in actual fact to commit

the nation permanently to its unregulated program, beyond practical recall by Congress itself or by the people as a result of political action. The corporation and its directors are acting to that end by speeding the vast program, by demoralizing the state controlled system of utilities and utility regulation, by subsidizing state subdivisions into assumption of utility operation by means of the offer of subnormal rate schedules, long term contracts, and the TVA proposal to purchase or construct distribution systems at TVA expense for transfer to the towns, by organized propaganda, by making illegal assurances (such as the promise by Lilienthal to the Governor of Alabama that TVA will donate federal funds to those cities and counties from which the Alabama Power Company is being driven equivalent to the amount of ad valorem taxes thus lost to the local subdivisions) and by like high pressure and unlawful action in extension of the program, with no effective check or test whatever.

The combination of corporate power held out by the Act with the actual plan and program of TVA will, accordingly, unless restrained, result in the practical accomplishment of that program, from which there would be no assured retreat, even as a result of political reversal. Complainants aver that result to be a casus not contemplated by the Constitution and that the creation by Congress of a corporation empowered to commit Congress itself and the people to any such result is violative of the provision of the

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Constitution establishing legislative power in the Congress and the intent of that instrument that legislative policies of long or permanent duration shall remain effectively subject to repeal at the same or

succeeding Congresses and not be perpetuated by corporate devices and corporate programs.

(16) The Executive's (New York State) theory of yardstick operation and its promotion by TVA through furtherance of municipal or public ownership and regulation of local utilities by public competition, as applied and forming the basis and purpose of the acts and program herein complained of, however debatably or freely those purposes may be recognized as appropriate state functions in the State of New York, are not lawful functions of Congress or of the federal government. Notwithstanding this limitation, in the negotiations between the President of Commonwealth & Southern with respondents A. E. Morgan and Lilienthal, representing TVA, which resulted in the contract of January 4, 1934, herein mentioned, Lilienthal advised that TVA conceived that

> "the provisions of the Muscle Shoals (TVA) Act, **together with the declarations of the President of the United States**, required the Authority (TVA) to establish a yardstick. In other words, that the Authority was under the mandate to construct or acquire, either competitively or by purchase, the transmission systems, and have the municipalities construct or acquire the distribution systems in a given area, so that it could determine the fair price at which electric energy should be sold."

Complainants aver that said TVA and its board are in fact proceeding with their administration of its affairs on that unlawful theory.

The basis of the program, as thus stated by Lilienthal and actually being put into effect by the TVA is, moreover, arbitrary, unreasonable and misleading. As later more fully averred, the yardstick theory, in addition

to its basic illegality, is illusory and misleading. As employed by TVA the yardstick is devised and used to promote municipal ownership of electric utilities, under and subject to TVA domination and control and exclude privately owned utilities from the areas of service selected by TVA.

(17) The previous joint resolutions relating to the disposition of Muscle Shoals power which were adopted by Congress and failed of Executive approval described with adequate legislative definition the number of the units in the new construction proposed to be authorized by those measures. S. J. 46 provided for the completion of the dam and steam plant No. 2. S. J. Res. 49 provided for that work and in addition for Cove Creek. In contrast, the present Act contains no definition and no limitation. Section 4 (j) enumerates among the corporate powers of TVA the following:

> "(j) Shall have power to construct dams, reservoirs, power houses, power structures, transmission lines, navigation projects, and incidental works in the Tennessee River and its tributaries, and to unite the various power installations into one or more systems by transmission lines."

By reason of its legislative uncertainty and its unlimited generality as to the purpose or object of the apparently unconditional program authorized in Section 4 (j), the Act is invalid as authority in respect of any work undertaken under that section, lacking any standard or intelligible definition of legislative policy.

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The Corps of Engineers has reported that there are one hundred and forty-nine hydro-electric projects available

or capable of development in the basin of the Tennessee and its tributaries. The aggregate cost of all this work, included within the language of Section 4 (j), would be in excess of a billion dollars. Section 27 of the Act authorized "all appropriations necessary to carry out the provisions of this Act." The interpretation of the Act as contended by the TVA would give it the full power of a business corporation acting within charter powers to create twenty-five billion KWH annual primary capacity potential in these projects, and enter into, subsidize or promote any business whatever to find a market for this power; in short, unlimited power to dominate and reform the lives and destinies of the people of the area through domination of their industry.

It is not consistent with the Constitution of the United States that any such power as is included in Section 4 (j) or as is now being claimed and asserted by TVA should be delegated to any agency of the federal government under distortion of the power over navigation or, if possessed in any degree whatever by Congress in relation to navigation, should be subjected to any such enlargement as delegated to or claimed by TVA.

The Act [Section 2 (h)] commits the directors of TVA to profession of belief in the feasibility and wisdom of the Act as the price of their appointment to and continuation in office, thus disqualifying them from reacting to the Constitution and the principle of fair play in the administration of their duties in relation to existing utilities in the TVA area. The Act itself, predicated on that commitment, is invalid.

To vest any such mentally bound agency with unlimited power and access to unlimited funds in a program of business competition and public ownership promotion, under

the circumstances of dependence upon the fairness of the agency as to Alabama Power Company herein averred, is to deprive that company of its property without due process of law in violation of the Fifth Amendment to the Federal Constitution.

In like manner, the arming of any such corporation with power or its usurpation of power to enforce sale of privately owned property on terms acceptable to the purchaser as the only alternative to competition with, or subsidized by, the Government (represented by any such corporation) on a basis not possible for private industry to meet, is an effective evasion of the provision of the Fifth Amendment to the Constitution prohibiting deprivation of property without due process and is, moreover, a violation of that provision of said Amendment providing that private property shall not be taken without just compensation, as hereinafter more specifically averred.

(18) Included in the acts undertaken under color of Section 4 (j); (also Sec. 17 as to Cove Creek) of the Act are (a) the Cove Creek hydro-plant and (b) the pending construction of Wheeler Dam hydro-electric plant, planned and designed to throw 1,100,000,000 KWH, estimating 50% load factor, of additional primary electric energy in a market which is already served by a large excess of capacity and energy over demand. Both of the projects are proceeding in violation of law in the following among other respects:

**(a) Cove Creek**

(i) The dam was to be constructed by organized Departments of the Government (the Secretary of War or Interior) either directly or by contract or with the aid of an engineer from private life to be designated by the President but employed by the Secretary of

War or Interior. The President by Executive Order (No. 6162, June 8, 1933) directly placed the construction in the hands of a public officer, Arthur E. Morgan, and provided that the "work shall be done by and through the Tennessee Valley Authority," thus effectively removing the function of construc-

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tion and the employment of the constructing engineer from the Departments mentioned and from consequent responsibility to one of those departments as contemplated by the Act. This action subordinates that construction wholly to the TVA's erroneous conception of its power and function as herein complained of, and perpetuates the power project basis of the design and construction beyond recall or review unless judicially restrained.

(ii) The plan and design for the Cove Creek Dam is required by said Section 17 to be such as that by its operation in increasing and regulating the flow of the Clinch and Tennessee River "the maximum amount of primary power may be developed at Dam Number 2 (Muscle Shoals) and at any and all dams below the said Cove Creek Dam." That plan and purpose is basically and intrinsically inconsistent with design and use of the dam for the primary purpose of navigation and flood control and is consistent only with a primary power program, an objective which is not within the lawful power of Congress.

**(b) Wheeler Dam**

(i) Complainants aver that there is no lawful provision in the TVA Act authorizing TVA to construct Wheeler Dam and a vast hydro-electric plant at that dam for the creation and sale of the resulting power in promoting a utility business in competition with Alabama Power Company or other utilities or industries.

(ii) The present system of Alabama Power Company is capable of delivering 2,058,000,000 kilowatt hours of primary power at 58% load-factor during a low-water year. During 1933, 1,399,000,000 kilowatt

hours of power were actually generated by this system, leaving 659,000,000 kilowatt hours of primary power without a market, or a surplus of 48 percent.

There is presently available at Wilson Dam during a year of low-stream flow, 500,000,000 kilowatt hours of primary power. Adding this to the existing Alabama Power Company surplus of 659,000,000, makes the present aggregate surplus of primary power 1,159,000,000 kilowatt hours, or 82.8% of the 1933 generation.

On completion of Norris Dam and the initial generating plant at Wheeler Dam, an additional 1,100,000,000 kilowatt hours of primary power will be thrown on the market. Adding this to the existing surplus in Alabama would result in a total of 2,259,000,000 surplus kilowatt hours a year or 161% of the total generation of Alabama Power Company for the year 1933, now serving the market in Alabama.

Like excess of capacity over market exists in the areas in the Tennessee Valley states served by other utilities.

Under these circumstances, the construction of any hydro-electric plant at said Wheeler Dam, still further to flood a market already oversupplied, is arbitrary, constitutes an abuse of discretion, and should be restrained as an unjust, unwarranted, and uneconomic extension of power beyond any reasonable relation to navigation.

(iii) In a futile effort to obtain a market for some material part of this gross over-production of power, TVA is forcing a high pressure sales program for installment sales of electric appliances, as hereinafter averred.

(19) In order to take territory for its power program from existing utilities, including Alabama Power Company, said TVA, working in coordination with the Public Works Administration, herein called PWA, has aided and encouraged various of the respondent municipalities to apply for and obtain approval of grants (approximately 30%)

and loans of PWA funds to enable them to enter into the business of distributing TVA power within the area now served by Alabama Power Company, TVA in addition at all times holding out the threat

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of direct construction and competitive operation. A number of such grants and loans were formally or informally approved.

The construction of a competing system and its operation by TVA or by any municipality under contract with TVA, at rates lower than could be offered by Alabama Power Company without involving substantial sacrifice of a fair and reasonable return and certain demoralization of its entire business, would mean disaster for Alabama Power Company. That threat has from the outset been held out by TVA. It was held out in its negotiations for the contract dated January 4, 1934, herein mentioned. By the terms of the contract itself and by public declaration of intent TVA has advised the Power Company that the truce as to territory was temporary and terminated with the completion of the Norris hydro plant, thus warning the signatory companies to prepare for any further encroachment on their service area deemed necessary to absorb the vast increases in hydro-electric energy included in the TVA program.

In addition TVA has set up in its initial budget of $310,000,000, the sum of approximately $100,000,000 for taking over existing or constructing competitive distribution systems in order to absorb its excess power. There is no substantial area or existing market in transmission distance of the existing or proposed plants not already served by existing utilities subject to regulation by the respective states which they serve.

This public threat, supported by the means stated, is unlawful in design and detail, yet so long as TVA is permitted to follow that program privately owned utilities selected as the victims of this feudal action are helpless to resist unless protected by the Courts.

(20) Under the circumstances of threatened competition, direct or controlled by TVA as averred herein, the Alabama Power Company and other utilities controlled by Commonwealth & Southern accepted and agreed to the forced sale of certain of their respective transmission lines and properties and entered into a certain contract dated January 4, 1934, of which a copy is attached hereto marked Exhibit No. 5 and made a part hereof, omitting certain descriptions or exhibits as indicated, not material or otherwise sufficiently described herein. The contract was obtained by TVA, so far as Alabama Power Company is concerned, by threatened use of federal funds, threatened duplication of facilities and competition with rates not attainable for private industry or permitted or permissible to the Power Company, stipulated, controlled and regulated by TVA.

(21) At a later date, and after the execution and delivery of the original agreement (Exhibit No. 5), TVA conceived that the prices agreed to be paid for the 1643 acres of land upon or near the Tennessee River near the site of Dam No. 3 (Wheeler Dam), referred to below, viz., $150,000, equivalent to $91.30 per acre, might establish too high a market value for lands of that character or in that vicinity required for submergence in building Wheeler Dam, induced the Alabama Power Company and the other parties to enter into an amendatory contract redistributing the consideration for the several items agreed upon with

the Power Company so that the aggregate purchase price would be the same, but the price allocated to the Wheeler Dam properties would be reduced to $48,744, or at the rate of $29.67 per acre. The purpose of the amendment was accordingly an improper one, and contrary to good morals. Its objective was to overreach the owners of overflow lands. The Alabama Power Company and associated companies should not have participated in and should not now carry the same into effect. Complainants are entitled to be relieved of the odium and to have the Power Company relieved of the odium and risk of permitting itself to be used for any such purpose. The parties to said agreement other than Alabama Power Company and TVA are not interested in the matter of said amendatory agreement and are not necessary parties to relief in respect thereto. Copy of said amendatory agreement is attached, marked Exhibit No. 5-a.

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(22) In addition to the above stated equity for its annulment, the basin and controlling purposes of said agreement of January 4, 1934 (Exhibit No. 5) so far as TVA is concerned, were and are illegal, or the execution thereof would tend to accomplish illegal objectives, in the following respects:

(a) Said agreement as a whole was brought about under circumstances of substantial duress, to-wit, the threat of TVA to construct, operate and enter into competition with the existing utilities serving the area; and, in furthering that objective, to undersell the rates established by State regulation and to construct new and duplicate systems; all through the use of federal funds, and TVA regulation or control of consumer rates.

(b) The purpose of TVA was to monopolize the control of utility rates in the area chosen by it and to monopolize distribution in said area.

(c) Also to regulate by the proximate effect of its own program rates elsewhere, including the remaining area to be served by Alabama Power Company and to reduce all rates to a subnormal and non-compensatory basis in that area.

(d) The execution of said agreement of January 4, 1934, and all acts within the State of Alabama done or to be done by TVA in the execution thereof are unlawful and in violation of the law of Alabama in that said Tennessee Valley Authority:

1. Has not applied for a certificate of convenience and necessity, for assumption of utility duties (Code of Alabama, Sec. 9795);

2. Has never qualified as a non-domestic corporation to transact local business in Alabama, the functions in question being proprietary and not governmental (Secs. 7209, 7211, 7214, 7220, Revenue Act of 1927, Sec. 54, p. 176);

3. Has not filed and does not propose to file its rate schedules with and subject to approval by Alabama Public Service Commission or otherwise to subject itself to the jurisdiction of the Commission (Secs. 9771, 9779);

4. Proposes to operate the properties to be acquired under the contract as utility properties in the State not only in violation of any lawful federal power to that end, as herein elsewhere amplified, but, in general, without complying or intending to comply with any of the laws of Alabama applicable to utilities and without assessing or paying ad valorem taxes or license, franchise, excise or other taxes in respect of such properties or operations.

(e) Execution of the agreement by Alabama Power Company would directly and proximately tend to accomplish the illegal purposes, objectives and intent herein averred.

(f) Also the political purpose of furthering public ownership of distribution systems.

(g) To expedite and establish beyond practicable

recall the TVA program as to power control and distribution in the area.

(h) Acquisition of properties not authorized by TVA Act.

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(23) Pursuant to Section 22 of the contract dated January 4, 1934 (Exhibit No. 5), TVA called on Alabama Power Company to obtain consent of Alabama Public Service Commission to the transfer of the properties contemplated by the contract [Items (1) to (5), inclusive, Exhibit No. 1], and under date August 9 entered into further agreement with Alabama Power Company for transfer of the properties described in items (6) and (7) of Exhibit No. 1, for a further sum of $1,000,000, all under like circumstances of duress and threat of duplication and competition through use of federal funds and subnormal rate structures, as in the case of the execution of the original agreement.

Application to Alabama Public Service Commission (Docket No. 6604) was made by Alabama Power Company on May 22, 1934, for approval of the transfer in respect of the first group of properties. Hearing on the application was, at the request of TVA, expedited, and no publication of notice thereof was made under Section 9827 of the Code of Alabama. The hearing on said application was in effect an ex parte hearing at which the Power Company was still subject to the duress herein mentioned and to the apparent obligation of the contract, and no opposing interest was represented. There was no contestation, nor were the grave questions of public policy and the Constitution raised, presented or argued.

The Commission accordingly entered an order on June 1, 1934, in general terms finding the contract of January

4, 1934, and proposed sale of the properties described in paragraph 2 of the contract [Items (1) to (5), inclusive, of Exhibit No. 1] to be consistent with the public interest. Before execution of the transfer there was an application for rehearing by Aetna Coal Company and others, who intervened for the purpose. On consideration of the application for rehearing, the Commission by supplemental order dated July 14, 1934, revised its original order to the extent of holding:

> "(4) That the Tennessee Valley Authority, in carrying on the intrastate operations, as shown by the record, in its ownership and operation of plant, property and facilities for the transmission or distribution, sale or furnishing to or for the public of electricity in that area within the State of Alabama specifically described in said contract of January 4, 1934, is a utility as defined by the statutes of Alabama, and is engaged in a proprietary business and not a governmental function, and is therefore subject to regulation as a utility under the laws of Alabama;
>
> "(5) That the Authority is required to file with the Commission, within thirty days from service of copy hereof, a schedule of its rates and service regulations under which it proposes to serve in carrying on its said intrastate utility operations within the State of Alabama;"

and otherwise overruled the application for rehearing, and in its opinion accompanying the order definitely and decisively declined to consider or pass upon the assertion of interveners "(a) that the Authority (TVA) is without constitutional powers to engage in such utility business, and (b) that the engaging in such utility business by the Authority is ultra vires," the Commission asserting "We shall not assume to pass upon these questions * * *. These, as we have above stated, are among the questions

which we have respectfully remitted to the courts to determine."

Appeal from the order approving the contract and sale was taken by interveners in so far as the revised order approved said sale or contract of sale. This appeal resu'ted in a decree of the Circuit Court of Montgomery County entered September 4, 1934, annulling the order appealed from for lack of statutory notice,

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and remanding the application for further hearing after adequate publication of notice. Said application is accordingly again pending before the Commission in its Docket No. 6604.

The application in respect to the second group of properties proposed to be transferred is pending before the Commission in its Docket No. 6636, and has been set for hearing on September 18, 1934. A copy of the contract of August 9, 1934, between the Power Company and TVA relating to the distribution systems thereby proposed to be transferred is attached hereto marked Exhibit No. 6 and made a part hereof. Pursuant to that agreement TVA has exercised the option to purchase provided by the contract.

(24) Complainants have no adequate judicial remedy by deferring this recourse to the courts and attempting to avoid the consequences of the contracts of January 4, 1934, and August 9, 1934, by appearing before the Alabama Public Service Commission in said hearings for the following among other reasons:

(a) Said proceedings are administrative in character both originally and on appeal and no right of

appeal lies from any final order of the State tribunals to the U. S. Supreme Court.

(b) The judicial questions herein presented are not identical with the questions subject to consideration by the Commission.

(c) The principal decisive factor on all questions before the Commission in said proceedings is the question whether the proposal is in conflict with the general public interest and not the question of the proprietary interest of Alabama Power Company or its stockholders. Although the interest of all citizens fairly involved or affected is a proper consideration it is not the decisive or controlling factor.

(d) The right of intervention in said proceedings has been vigorously denied and challenged by TVA, "appearing specially" before the Commission and on appeal in Docket No. 6604. Also, by virtue of its domination and duress over Alabama Power Company, the latter was induced to appeal from that part of the order of the Commission dated July 14, 1934, in Docket No. 6604, allowing formal intervention by Aetna Coal Company and others. The right of intervention and appeal is accordingly challenged and to that extent in doubt, even in the administrative aspects of the proceeding.

(e) In anticipation of pro forma hearing and approval of its program and said contract of January 4, 1934 (Exhibit No. 5), TVA has induced the Power Company to begin deliveries of power to the City of Athens for the account of TVA, in consideration of a like volume of power delivered the Power Company at Muscle Shoals; and is pressing in other respects a consummation of the agreements. Complainants are not warranted in delaying the filing of this bill of complaint in reliance upon a doubtful administrative remedy in view of the intent of TVA to expedite its practical consummation and its willingness to drive the Power Company to that end.

(f) The Commission has not only affirmatively declined to consider the questions of constitutional and statutory power of TVA in respect to the matters complained of but is being subjected to a systematic

campaign of political pressure by the TVA and the respondent municipalities acting through public meetings, boycott conventions, Chambers of Commerce, Legion Posts, federated labor councils or similar agencies for arousing public clamor to denounce the Commission for and force a reversal of its conclusion that as a proprietary utility TVA would

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be subject to state regulation and to denounce and boycott recourse to the Courts in an orderly effort to challenge the constitutionality or validity of the program. The facts aforesaid directly tend to deny and defeat free recourse to administrative processes and free and unhampered conclusions by the Commission itself.

(g) Any conclusion by the Commission sustaining the program of TVA herein complained of would on the facts be so plainly arbitrary as to be subject to direct attack by judicial proceedings by any party having a justiciable interest in the matter within the purview of the decisions of the Supreme Court of Alabama.

(h) Remedy by recourse solely to the Commission would be plainly inadequate and incomplete. Primary aspects of the relief to which complainants are entitled are not subject to the administrative jurisdiction of the Commission, and can not appropriately be severed from consideration in connection with the contracts and transactions, other aspects of which alone are appropriate for consideration by the Commission. They can be dealt with in their entirety only in a judicial proceeding.

(i) The two proceedings before the Commission (Docket Nos. 6604 and 6636) although involving certain identical basic questions, have been split in their submission to the Commission, and are pending in different proceedings without consolidation. There may and probably will be different interveners. It is possible that the Commission may reach different results or conclusions and that the proceedings may involve issues not germane to the judicial questions presented by this suit.

(25) The consideration proposed to be paid to the Power Company by TVA for the forced sale of its respective properties and abandonment of franchises, service and service area, under the circumstances averred herein, is grossly inadequate. Without taking into account the heavy corporate expense over a long period of years referable to the establishment of the business, the energizing of the system and the attachment of those elements of value inherent in going concern and established reliability of service, in this case involving a period of utility service by Alabama Power Company and its predecessors in title of more than nineteen years, the proposed considerations are, on a basis of bare reproduction cost, inadequate. They are materially less than the value of the properties as reflected in the property investment account of said Alabama Power Company, established and maintained in accordance with the rules of the Alabama Public Service Commission prescribed pursuant to law.

This cost, as reflected in the investment account of Alabama Power Company, is approximately $3,962,643.63. The total purchase price proposed to be paid for the utility properties, that is, the total consideration agreed, including the amount originally and in fact agreed upon as a consideration for the Wheeler Dam site,—is $2,179,000, made up as follows:

| Contract of Jan. 4. | Book Cost | TVA Purchase Price |
|---|---|---|
| 44,000 v. lines, substations and distribution systems on and in connection with the service to Athens, Ardmore, Elkmont and rural lines and the site at Wheeler Dam | $2,036,828.03 | $1,179,000 |
| **Contract of Aug. 9.** | | |
| Distribution systems in and adjacent to Decatur, Florence, Sheffield, Tuscumbia, Russellville, Red Bay, Leighton, Town Creek, Moulton, Hartselle, Cherokee, Falkville, Austinville, Courtland | 1,925,815.60 | 1,000,000 |
| Total | 3,962,643.63 | 2,179,000 |
| | 2,179,000.00 | |
| Loss in Investment | $1,783,643.63 | |
| Per cent. Cash to Investment | 54.98 | |

Deducting $150,000, the amount originally and in fact agreed by paragraph 2 of said contract of January 4, 1934, to be paid for the Wheeler Dam site, will leave the sum of $2,029,000 as the sum to be paid for operating utility properties, which is a grossly inadequate sum for the permanent surrender of any such operating property or the fair revenue derivable from the regulated operation of same as part of the system of Alabama Power Company.

Referable to this part of the system is, of course, its fair part of the cost of generating and distribution plants and systems.

The revenue derived from the operation of said properties during 1933 was approximately $750,000.

In terms of customers alone, the severance of these properties would result in the loss of ten thousand customers,

or approximately one-tenth of the total number of consumers directly served by the Power Company.

Not only is the consideration proposed to be paid far below the cost of any item of the properties to the Company, exclusive of their value as developed and going integral or regional utility units, but it fails to take into consideration either the direct and certain damage to the system as a whole which will result from the severance of this property from the system or the uncompensated burden which it will throw upon the system and the Power Company's remaining customers and public service.

If the same percentage is applied to the remaining properties of the Company when and in the event that TVA shall demand additional areas in its march to the Gulf in taking markets for its vast additions to the existing surplus power in the area, there will be nothing for either the Company or the preferred stockholders, and a sum barely sufficient to pay the Company's bonded debt.

The effect of the transfer would be permanently and irrevocably to withdraw Alabama Power Company from the ceded area and entrench TVA in that area without effort and without risk except the effort and risk incident to an act of duress and improper use of federal funds and unlawful assertion of federal power.

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The threatened action would result in the abandonment and loss of franchises by the Alabama Power Company within the municipalities involved, which once lost obviously could not be renewed against the subsidized competition and public ownership propaganda offered or carried on by the TVA as herein averred and would, accordingly, accomplish a permanent loss of property and business and

impairment of organic function as to Alabama Power Company.

While TVA has announced that it prefers to purchase rather than to duplicate the existing utility properties in extending its program, it has publicly disclaimed any intent to pay for those elements which as of right would be included in the award in the event of any forthright or lawful condemnation of the property, such as good-will or going concern value, attached business, development cost or severance damage. In dealing with the power companies selected by TVA for absorption, it is dealing with citizens in no position to resist its ultimata.

Under these circumstances, the program as applied to Alabama Power Company is, in effect and fact, a condemnation of the property of the Power Company, by means of an agreement exacted under duress, without following the procedure required by law for the exercise of the power of eminent domain and constitutes an evasion and violation of the Fifth Amendment as to just compensation and of the federal statutes relating to or authorizing condemnation, assuming the right (denied by complainants) of TVA to acquire these utility properties at all. The action of TVA, moreover, deprives the Alabama Power Company of its property without due process in that the duress applied effectively deprives that company of its right to challenge the validity of the TVA Act or of the action of TVA herein complained of except at the risk of the destruction of its property and business by duplication and competition financed by federal funds.

(26) The program of the TVA, in which the contract of January 4, 1934, is a material step, is not consistent with the public policy of the State of Alabama or with the

sovereignty of the State in respect to the control of its utilities, and is in that respect a violation of federal function and unlawful.

The TVA Act purports by Section 11 to define rigidly the policy of the government as to the disposition of the surplus power generated at Muscle Shoals. This includes not only the present developed power but the accretions in process of production by TVA.

The policy of distribution declared by Congress by Section 11 is not limited to the initial sale of the so-called surplus, but, unlawfully borrowing the standard of policy fixed by the New York Power Authority Act in the exercise by that State of its asserted police power, said Section 11 purports to intrude a federal policy upon the distribution of energy into the homes and shops of the people of Alabama by making or controlling the retail or resale price and fixing the policy of rate making.

In detail, this statutory declaration of policy is to the effect that the distribution shall be for the benefit of the people of the section (viz., the area within transmission distance) as a whole "and particularly the domestic and rural consumers," and that accordingly sale to and use by industry shall be a secondary purpose to be utilized principally to secure a "sufficiently high load factor and revenue returns which will permit domestic and rural use at the lowest possible rates."

In short, it is the mandatory policy of this Act and of the TVA program to make rates that will emphasize domestic use by consumers in the region rather than industrial development in the area and consequent general increase in employment and ability to pay.

The State of Alabama, which alone is entitled, within Constitutional limitations, to make the decision on that

matter, has not attempted by rigid statute to resolve the choice of policies in favor of preferential domestic schedules as against industry

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and wages or, indeed, to require that either classification be preferred or burdened at the expense of the other.

It is the public policy of Alabama that questions of this character should remain open for consideration by the Commission or other regulatory agency on the facts as they develop from time to time and not be frozen by 30 year contracts or policies or by any political or social policy whatever dictated by the Federal government.

The TVA Act to the contrary and the TVA program in giving effect to it, are invalid. No such resale or retailing policy has any fair relation to navigation or any lawful federal function.

This violation of law, setting up a policy of relationships not conforming to the relationship imposed on the Power Company by the law of Alabama will directly tend to injure and regulate Alabama Power Company in its business as elsewhere particularized herein, not by any fair yardstick test but by the demoralization of a subsidized scale of rates in the TVA area in Alabama, subnormal both as to domestic and industrial schedules and with class relationships violative of the public policy of Alabama, and dictated in specific detail by a federal agency.

(27) A basic condition and aspect of the TVA program is the direct acquisition of lands and fixed properties and their operation or essential control by the Federal government subject to utility policies and rates determined by

TVA. That policy is inconsistent with the public policy of Alabama, and with the Constitution of the United States.

The people of the State of Alabama have by all of their constitutions adopted since the overthrow in 1872 of carpet-bag government prohibited the State from engaging in or lending its credit to works of internal improvement or private or corporate enterprise, with the exception of highways and the Port of Mobile, covered by formal amendments (Const. of 1875, Art. IV, Sec. 54; Const. of 1901, Sec. 93). Nor have the people of Alabama yielded their consent to the federal government to engage in the utility business or to acquire property to that end or ceded any jurisdiction of that character (Code of Alabama, Sections 1505, 3147).

The TVA program of utility operation involves, accordingly, the assertion by a corporate agency of the federal government of powers relating to works of internal improvement or utility local to the State which the people of Alabama have expressly withheld from the State itself and have not ceded to the federal government.

The Authority granted by the so-called Carmichael Act to municipalities (Act No. 107, Acts 1933, p. 100) was limited, in respect to transactions with the federal government, to acquisition of electric power or to the borrowing of funds within stated limitations and did not authorize contracts involving the contractual surrender of the police power of the State to any federal agency nor the right to grant franchises to the federal government for the conduct of local utilities over the public streets; nor does any other statute of Alabama authorize any such action. The cession of rights and grants to the federal government is defined and limited by the statutes above cited.

Nor could the legislature itself without amendment of the Constitution of Alabama cede any function of sovereignty or police power to the federal government; nor could the latter accept it, even with such amendment.

The acquisition of properties by TVA from Alabama Power Company threatened as stated herein is for the express and declared purpose of owning, operating and extending same as local utilities without the consent of the State of Alabama until such time as TVA shall, at its option and on conditions of control fixed by it, agree to transfer parts of the properties to the respective municipal respondents, for operation by the latter subject to control by TVA.

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Complainants aver that the proposed acquisition of said utility properties from Alabama Power Company for the purposes and with the intent stated was and is unlawful, in violation of the laws and public policy of Alabama, and without sanction under the federal Constitution or any lawful provision of the Tennessee Valley Authority Act.

(28) On the contrary, complainants aver that neither the Tennessee Valley Authority Act nor the federal constitution lawfully contemplates the acquisition and operation of utility distribution systems or their reconstruction by TVA and sale on a vendor's lien basis to municipalities; nor does that Act lawfully contemplate the assumption of utility functions which are in their nature permanent, which cannot be renounced except by leave of the State, and as to which the properties thus dedicated to the public service may not be transferred without the consent of the State.

(29) The plan and design of TVA is, as aforesaid, to acquire and at some unknown time and on unknown terms convey the utility properties to the respondent municipalities, without the consent of the State, under terms and conditions not approved by the State, in effect reserving power of regulation to TVA contrary to the laws of the State of Alabama and the federal Constitution.

(30) Complainants further aver that the funds being employed by TVA and with which it proposes to make payment for said several items, and for its varied activities herein complained of, are not lawfully subject to appropriation by TVA for the purposes stated; that Alabama Power Company has notice and knowledge of the source of said funds, of their proposed unlawful diversion, and will be subject to penalties and suit for the restoration of the same to the Treasury of the United States, the salient facts with reference thereto being as follows:

(a) By the Fourth Deficiency Act, Fiscal Year 1933, approved June 16, 1933, there was appropriated $3,300,000,000, of which not to exceed $50,000,000 was to be available to the Board of Directors of the Tennessee Valley Authority, and to remain available until expended,

> "for the purpose of carrying out the provisions of the * * * Tennessee Valley Authority Act of 1933, * * * including the acquisition of necessary land, the clearing of such land, relocation of highways, and the construction and/or purchase of transmission lines and other facilities, the construction of the Cove Creek Dam and power-house and all other necessary works authorized by said Act, and for printing and binding, law books, books of reference, newspapers, periodicals, purchase, maintenance and operation of passenger-carrying vehicles, rents in the District of Columbia and elsewhere and all

necessary salaries and expenses connected with the organization, operation and investigations of the Tennessee Valley Authority, including reimbursements for any expenses prior to the enactment of this appropriation incurred at the direction of the President."

There is no valid provision of said Act authorizing the acquisition of properties for utility operations by TVA, or for reconstruction and subsequent transfer on a vendor's lien basis to bankrupt municipalities, or for the acquisition of any of the several and respective items set out on Exhibit No. 1, or for the activities herein complained of.

(b) There was appropriated by the Emergency Appropriation Act Fiscal Year 1935, approved June 17, 1934, the sum of $899,675,000, for carrying out the purposes of the Tennessee Valley Authority Act

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of 1933 and various emergency Acts and other specified purposes, "to be allocated by the President for carrying out the purposes of the aforesaid Acts, and to remain available until June 30, 1935."

There was no limitation upon the Executive as to the amount or proportion of this vast appropriation subject to allocation to TVA nor any definition of its purposes. That appropriation is accordingly a complete functional delegation of the control of Congress of the entire subject matter, and does not constitute a lawful appropriation.

The Treasury Statement of August 1, 1934, indicates that there has been allocated out of the Emergency Appropriation (Fiscal Year 1935) the sum of $25,000,000,

which is, according to the terms of the appropriation last above mentioned, subject to enlargement or reduction at any time by the President without limitation.

(c) Complainants aver elsewhere the unlawful character of the use of funds employed by TVA through its agency, the EHFA, which are being cleared through Alabama Power Company, with full knowledge of their unlawful withdrawal and use.

(31) Complainants aver that the acquisition of the properties and the activities complained of herein constitute no lawful part of an emergency program; that the program of the Tennessee Valley Authority is in substance and intent a long range program with only secondary relation to the present emergency; that even if it were an emergency program, the exclusion by means of duress of the Alabama Power Company from its existing markets, the forced purchase or taking of its stated properties by TVA for direct operation by that agency or its assigns, the execution of long time utility contracts, and the promotion of the peddling of electric appliances throughout Alabama, all as complained of herein, would have no reasonable relation to any emergency program. Nor have twenty and thirty year contracts any relation to emergency functions.

For this reason, aside from any constitutional question as to expenditures of federal funds for such purposes by the Federal government or by delegated agencies, there is no sound reason why complainants or any other citizens confronted with injury or penalties by the TVA program, should withhold aggressive resistance on the ground that the threatened action may be claimed to be primarily or in its essence or in good faith an emergency program or for the relief of unemployment. Complain-

ants aver that on the contrary, the direct, necessary and substantial effect of the generation of excess and unnecessary hydro-electric power and its forced and uneconomic competition with other fuels and industries will result tangibly and substantially in a net decrease of compensated employment of human labor.

If the matter of the activities hereinabove mentioned were, under any construction or under any circumstances, within the range of lawfully delegated authority for relief or emergency purposes, the TVA is in the respects and as to the activities averred acting unreasonably, arbitrarily and not in good faith and for the primary purpose of furthering and entrenching public distribution of power and the general TVA power program, including TVA control of local utility rates.

(32) By Section 18 of the contract of January 4, Alabama Power Company committed itself to co-operation with the Tennessee Valley Authority in the sale of electric appliances. A substantial element of the TVA program (wholly unjustified even by the TVA Act) is the sale of various electrical appliances for the twofold purpose of (1) a futile effort to increase the net consumption of electricity by domestic consumers in order to absorb the uneconomic increase in electric capacity and production definitely contemplated by the program, the initial step in which is under current

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process of construction at Cove Creek and Wheeler Dam, and (2) to enlist political and popular support for its general program and thereby entrench and extend that program.

A direct and proximate effect of the TVA appliance

program, in so far as it contemplates and promotes sales by Alabama Power Company in the area served by the latter, is and will be that customers of Alabama Power Company who may yield to the EHFA appliance selling campaign will promptly be advised by TVA and its agencies that their bill for energy for the use of these luxuries under TVA rates would be much lower than under the state regulated rates of the Power Company. In short, TVA is using the Power Company as an agent to bring about demoralization of its own service and good will, as a predicate to the next step in its aggression in the power field, and in extension of TVA control of utility distribution.

This appliance (EHFA) plan is a definite and integral part of the entire TVA program herein complained of, conceived and administered for the same objectives, to-wit, subsidizing public distribution of energy and extension of domination and control of utility rates and policies within the State of Alabama by TVA.

(33) Notwithstanding the fact, publicly recognized by TVA, that the rates and schedules approved by Alabama Public Service Commission and maintained by the Alabama Power Company are reasonable, the said TVA, for the purpose of furthering its said program, has initiated and broadcasted by means of its high pressure publicity organization, and through the incessant propaganda of its power director, the respondent Lilienthal, schedules of rates both for sales to distributors and for sale to consumers substantially lower than the "low," "cheap," and "reasonable" rates of the Alabama Power Company, having no justification in any fair allocation of the cost of the plant investment, return on the same, and deterioration and operating expense incurred in the operation.

These schedules and the announced conditions under which alone they are made available, following the so-called policy defined in Section 11 of the Tennessee Valley Authority Act, discriminate in favor of the domestic and rural consumer as against industrial use, though neither scale, domestic or rural, is justified by the actual cost of the current either as related to the existing production and distribution plants and systems or as projected into any possible combination of future installations, beginning with Cove Creek and Wheeler, on through the 149 units projected for the Tennessee and tributary basins. The cost of that energy, from all developed dams, is estimated at approximately 4.33 mills per KWH by the U. S. Corps of Engineers (under pre-NRA basis of costs) for energy delivered at the high tension bus bars at the respective dams, to which is to be added the heavy additional cost of transmission and distribution, which, in the experience of power companies serving the area in a much more compactly integrated system is substantially in excess of the cost of generation.

As for the proper cost to be allocated to energy now produced at Muscle Shoals, TVA is now receiving under its wholesale schedules now established for long term contracts only a fraction of the cost. With fair allowances for the cost of money, of developing and attaching business, of construction, operation, depreciation and maintenance, the schedules are palpably arbitrary and underestimated for Wilson Dam energy now being supplied and are underestimated for any future combination including Wilson Dam.

The premature commitment of TVA to these political and progagandist schedules is in violation of Section 14 of the TVA Act, which requires that the board shall make a thorough investigation as to the present value of Dam

No. 2 and the steam plants at Muscle Shoals and as to the cost of the Cove Creek installation, and

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similar improvements (transmission lines, etc.) for the purpose of establishing the capital basis of the power project. The TVA has entered into long term contracts or commitments for the entire available primary energy of Muscle Shoals without any such basic determination, and the respondent municipalities are about to enter into agreements with TVA further crystallizing this situation, unless restrained in this proceeding.

TVA can not until completion of the projects fairly estimate the cost of these units for long term contracts. Instead of allocating to power $37,000,000 of the cost of Wilson Dam, as determined by the U. S. Corps of Engineers and accepted by the President of the United States (Sen. Doc. No. 321, 71st Cong., 3rd Sess.), TVA is grossly underestimating that allocation or is making no bona fide allocation at all in order to further its under-selling program. A conclusive illustration of the lack of concrete bona fide or intelligent allocation of the cost is reflected in the testimony of the Chairman of the TVA, representing it before the House Committee on May 21, 1934 (p. 152), as to the valuation for power of Wilson Dam. This was long after the promulgation of the TVA schedules. The Chairman testified that he hated to guess, but "would say $20,000,000 at a guess." By the time of the Senate hearing on June 13, 1934, his testimony with reference to the matter was "I should say somewhere between $20,000,000 and $30,000,000." In short, there has been no bona fide allocation of the cost of present and prospective power production.

The illusory and unlawful characteristic of the "yardstick" as being applied by TVA is that it is not content to rest with production at federal dams and the final and unconditional sale of legitimate margins or surpluses of power at those dams or at legitimately reached markets. The program here involved includes a gross excess of production of power and in order to give the yardstick its consumer rate significance, includes the function of utility distribution and control of rates in respect to which the yardstick is not only illusory but in every aspect unlawful as a function of the federal government exerted on property not subject to its territorial sovereignty and jurisdiction.

(34) In furthering and as a part of the program herein complained of, the Tennessee Valley Authority has been and is now engaged in systematic political activity and propaganda, in arousing antagonism to utility managements, in inducing or persuading municipalities to decline to extend franchises and to enter into the field of municipal operation under contract with TVA. These activities constitute no legitimate function of Congress or of TVA. As employed to extort its properties from Alabama Power Company that action was and is arbitrary, deceptive and unlawful.

Among other unlawful and unfair means employed have been and are:

1. Abuse and misrepresentation of utilities, in so far as Alabama Power Company is concerned, of which representative quotations from the public releases of the TVA are hereto attached, marked Exhibit No. 7, and made a part hereof.

2. Inciting or aiding meetings of representatives of

municipalities which intend to become preferred beneficiaries of the TVA program to public attacks upon the Alabama Public Service Commission for its official action in connection with matters affecting the program, and abuse of and resolutions to boycott citizens for having recourse to the courts to challenge the program or details thereof.

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3. The TVA, working in close harmony with Public Works Administration under control of the Secretary of the Interior, as Administrator, has urged and influenced the latter to allocate loans and grants of federal emergency public works funds, for the full estimated cost of proposed electric distribution systems, under color of Title II of the National Industrial Recovery Act (No. 67, 73rd Cong. June 16, 1933, 15 U. S. Code, Sec. 701, et seq., 48 Stat. 195), primarily as a threat or lever to force existing utilities to yield to the TVA program and sell their properties to or upon terms dictated by TVA for subordination to the latter's domination and control.

Such action on part of Public Works Administration was and is in violation of the purpose of said Title II of said Recovery Act, which was intended to provide employment for starving people through new work and not to be used as a blackjack to enable TVA to purchase existing systems in furthering the latter's public utility program.

Illustrative of this abuse of function herein complained of (without reference to its fundamental violation of the Constitution in other respects) is the history of the PWA allotment to the respondent City of Florence and to the City of Knoxville. These allotments of PWA funds were made and were held open, notwithstanding recognized

deficiency in credit rating in each case, for the full cost of the proposed systems until in each case agreements were obtained from the existing utilities for the severance of their properties on terms acceptable to TVA.

In the case of the City of Florence, this action was accompanied by an unequivocal breach of commitment on part of TVA to go forward with the City on City ownership basis with the aid of the PWA loan and grant. This allotment was in fact terminated after definite commitment by PWA, at the instance of Tennessee Valley Authority and the latter's action was formally condemned by the City authority and spread on its minutes. This action by TVA and participation by PWA was formally and finally announced by Administrator Ickes by telegram as follows:

"WASHINGTON D C

1934 JULY 11

Hon. Lee Glenn,
Mayor, Florence, Ala.

Lilienthal TVA has explained proposal to communities North Alabama whereby Authority will purchase distribution facilities Florence and other communities from Alabama Company, rehabilitate them and turn them back to communities. Also your proposal amend your application such manner Florence purchases existing facilities and uses PWA funds for rehabilitation and extensions. Lilienthal informs me that all other communities in area affected have approved TVA plan, that Florence alone is holding out. Policy Public Works is to support TVA. Its proposal furthers regional operation rural electrification pursuant to President's desires, whereas your proposal impedes that policy. This Administration will advance no funds to Florence for expenditures inconsistent TVA plan. It will aid entire region and in our judgment is highly advantageous to you. How-

ever allotment and grant will be maintained pending completion transaction between TVA and Alabama Company. Suggest you promptly take appropriate action accept TVA proposal so that it may exercise option within effective period.

ICKES, ADMINISTRATOR."

The option mentioned referred to the option from Alabama Power Company formally executed under date August 9th (Exhibit No. 6) and the maintenance of the allotment was for the sole purpose of coercion of that Company, or the alternative of providing TVA with an agency to control utility rates and distribution in the area.

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In like manner, in announcing publicly the surrender to TVA by the owner of the utility (Tennessee Public Service Company) serving Knoxville, where its purchase by TVA of the electric system was conditioned by TVA on acceptance by all bondholders of a stated discount on their first mortgage bonds within a dead line date, Lilienthal announced as follows:

"The contract between the City of Knoxville and the Public Works Administration, whereby PWA has loaned funds for the construction of a competing plant, will, I am advised, be continued in effect until the transaction between TVA and TPS has been consummated. Such consummation depends upon approval by the City Council of Knoxville, and upon the willingness of bondholders to turn in their bonds at the issuing price of 96½ within three weeks. If by August 8th, the company has not been able to get the bonds in at this price, there is no deal, and the City will then proceed to make an award for a new plant, bids on which are to be opened today."

Said actions were and are not lawful execution or dele-

gations of any lawful power vested in the Congress and were and are actuated by the purpose of TVA and associated agencies to nationalize or dominate electric utility operation in the Tennessee Valley, as part of the plan herein complained of, a function having no reasonable relation to navigation. The action was, moreover, arbitrary and unreasonable from an administrative standpoint and indefensible from an ethical one.

(35) Complainants aver that in making use of the claim of power, use of federal funds and means herein complained of to compete with and in fact force the Alabama Power Company out of the Tennessee Valley, and eventually out of such area as may be deemed necessary by TVA to absorb the vast increment of energy proposed by its program, the said TVA was and is not only exerting duress and committing other unlawful and arbitrary administrative acts as herein complained of, but was and is guilty of unfair competition in intra-state commerce, from which the Power Company is entitled to relief and as to which in the absence of any substantial defensive action on its part, forced by reason of the destructive alternative with which it has been confronted, complainants as stockholders have the right by this suit, under the circumstances herein averred, to redress in their own protection and in the protection of the Company. The respondent municipalities are aiding, abetting and participating in said unfair competition by their existing or proposed contracts with TVA in the matter of taking over the respective utility units and otherwise as averred herein.

(36) Among the methods of unfair competition, illegal agencies and unlawful means instituted by TVA in sub-

stantial furtherance of its program, and for the purpose of carrying on its political propaganda and popularizing that program, is the agency hereinabove mentioned, respondent Electric Home and Farm Authority, Inc., organized for the purpose of promoting the sales of so-called cheap electric appliances and equipment. Said TVA, by threats of going into the business of manufacturing appliances itself and/or by playing one manufacturer against the other, has induced a number of manufacturers to design and make available in quantity various electrical appliances, the leading items among which up to this time are electric refrigerators and electric stoves, but with motors and other equipment promised in the program. Not being desirous of employing its own appropriations in this objective, or being apprehensive of the personal consequences of diversion of TVA funds to any such conspicuously non-federal purpose, the said TVA directors induced the President of the United States to call by Executive Order for the creation of a corporate agency to handle this phase of the TVA program, as set out in Executive Order No. 6514, dated December 19, 1933, copy of which is attached hereto marked Exhibit No. 8, and made a part hereof.

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This agency was and is, in fact and effect, an agency of TVA, so publicly and repeatedly acknowledged, to aid in furthering and entrenching the TVA program. That relationship has been and is being published throughout the area by the adoption of the TVA trade-mark or copyrighted emblem "TVA—Electricity for ALL" stamped on all approved appliance units and on the flamboyant sales literature of EHFA, as well as by the numerous press releases of TVA and public assertions and declarations

of EHFA distributed in circular or poster form by TVA or by EHFA with the knowledge of TVA, of which representative illustrations more fully proclaiming the nature of the relationship of EHFA to the TVA program are set forth on the exhibit hereto attached and marked Exhibit 9 and made a part hereof.

As indicated in the Executive Order, the President of the United States shortly after its issue diverted from the relief purposes contemplated by the Recovery Act the sum of $1,000,000 to carry on this merchandising program in aid of the TVA program. The respondents of the TVA group thereupon proceeded to negotiate with the RFC in the guise of a mortgage loan company (although having not even a putative relation to any existing finance, insurance, banking or other collective investment institution within the purview of the RFC purposes) for a six year credit of $10,000,000 to finance the installment sale of electric appliances, assured against revocation either by Executive Order or by Congress by a clause in the agreement to the effect that on the day before any such revocation became effective the entire $10,000,000 would be made available to this merchandising agency in a lump sum.

Since that time the TVA, whose directors vote the stock and constitute the official management of EHFA, has in fact dominated said EHFA as an agency of and in furtherance of the TVA program.

Complainants are advised that the TVA and the individual respondents intend to deny any technical legal relationship between the two in so far as the TVA program is concerned, and in anticipation of that averment, complainants aver that if and when any such contention or averment shall be made, that the same is not true and cannot be made in good faith. The respondents A. E.

Morgan, H. A. Morgan and D. E. Lilienthal are required by Section 2 (f) of the TVA Act, so long as they are directors of TVA, to be engaged in no other business and to devote themselves to the work of the TVA, and complainants aver that in devising and administering EHFA they are in fact devoting themselves to the work of TVA and its illegal objectives herein complained of and the EHFA is likewise participating in those objectives as an agency of TVA.

(37) In addition to heavy expense for propaganda and high pressure promotion of installment sales by advertising, the principal financial function of the TVA-EHFA program is the discounting of installment paper by using federal funds derived as aforesaid, under exceptional terms and time for payment, viz., up to four years. These funds are under an agency agreement dated May 21, 1934, entered into between EHFA and Alabama Power Company, in accordance with Section 18 of the contract of January 4, 1934 (Exhibit No. 5), cleared through the Power Company. Copy of said agency agreement is hereto attached marked Exhibit No. 10 and is made a part hereof.

A number of dealers doing business in Alabama have been designated by EHFA as retailers under the plan. Under the agency agreement the Power Company advances the amount for discounting the installment paper as tendered under the agreed conditions by the authorized EHFA dealer. The Power Company collects the installment payments from the purchasers for EHFA. These transactions through the Alabama Power Company are being made or proposed generally throughout Alabama in the area not served by TVA.

Involved in this TVA-EHFA program are overstatements and actual misrepresentations of fact, published in multi-colored pamphlets and folders, under high pressure sales slogans, intended to overreach housewives and overcome sales resistance; by appeals by Lilienthal to householders to increase the use of current, purchase electric appliances and make a showing for TVA. Illustrative of these characteristics of the TVA program are the quotations from public releases or announcements of said TVA or EHFA set out on the Exhibit hereto attached marked Exhibit No. 11 and made a part hereof.

A flood of merchandising and advertising matter of this type is being issued by EHFA, franked through the mails as government matter to customers of the Alabama Power Company throughout the State of Alabama. The latter is permitting itself to be used for that purpose by supplying the names of its customers. The proximate result is or will be further extension of these non-governmental functions by unlawful means directly to the customers of the Alabama Power Company, with the inevitable repercussion toward TVA subsidized rates and federal operations throughout Alabama and further absorption of the Alabama Power Company's market and property.

The use of federal funds for any such long range purpose is a misuse of those funds and a violation of the constitutional limitation on federal power.

Any individual or agent handling the funds with knowledge of the facts incurs risk or liability for reimbursement. Aside from such direct risk, the Alabama Power Company has no right to participate in an essential element of a program which is planning the Power Company's destruction, which is not only a violation of the limitation on federal power and function but which lowers

the dignity of the Government of the United States to the basis of a cheap and mendacious peddling program exploiting installment gadgets or luxuries principally on women to absorb a part of the excess of power proposed by TVA.

Complainants aver, accordingly, that they are entitled to an injunction against Alabama Power Company to restrain execution of the undertaking of Section 22 of the contract of January 4, 1934, pursuant to which said agency contract with EHFA was entered into and to have that agency agreement annulled as directly involving a misuse of federal funds and functions and for the other reasons averred herein.

(38) This bill of complaint is not dependent for its equity upon the question of actual cost or value of TVA projects now completed or the prospective cost of production of energy at unknown groups or combinations of hydro plants or the question whether the TVA schedules are based upon consideration of all relevant competitive factors. The violation of constitutional function worked by the TVA program is absolute, without reference to the rational or irrational, arbitrary or other characteristic of the TVA rate schedule.

In addition to such intrinsic invalidity, complainants aver that the actions of the TVA herein complained of are so arbitrary and so lacking in any element of just or fair consideration of the rights of utilities already occupying the field which it has determined to take over, and of the rules of fair competition and fair play, that they cannot be construed as authorized by the TVA Act, and are void for that reason as well as by reason of the fact that as exertions of delegated power by an administrative agency they are arbitrary and oppressive and will, unless re-

strained, take the property of Alabama Power Company without just compensation and deprive it of its property without due process in violation of the Fifth Amendment.

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In addition to its basic and intrinsic illegality, the keystone of the TVA plan and program (the yardstick theory) is illusory, arbitrary and deceptive.

The so-called "yardstick" theory, borrowed, as hereinabove averred, from the internal improvement program of the State of New York, where regulation of distribution is a lawful function, has no rational or logical application as a national or general test. As used in loosely describing that state's St. Lawrence program the term had at least some local limitation and significance. As applied in the Executive's national power program and by the TVA the so-called yardstick is meaningless, as a test of cost it is illusory.

Cost is a variable term, made up of variable elements, involving (a) generation, (b) transmission, and (c) distribution; all of these variables are dependent upon a series of other variables, including

1. Size and cost of facilities for generation and standby service as related to the area and load served; such cost being in turn dependent upon a vast number of variable factors, including cost of labor, of money, of materials, time of construction, cost of development;

2. Cost of fuel, for steam generation;

3. Location of generating plants with respect to load center;

4. Characteristics of load and diversity factors;

5. Load densities;

6. Labor costs, taxes, length and terms of franchises and necessity for amortization.

All of the foregoing are variable with every installation. Cost of hydro generation has no rational "yardstick" relation to steam or combination steam and hydro power. Cost at one hydro or group of plants has no rational yardstick relation to any other plant or group of plants. Stream flow is a material factor.

The estimate of cost at the hydro plants for the potential water powers of the Tennessee Basin made by the Corps of Engineers was 4.33 mills per KWH, as elsewhere averred herein. The estimated cost at the St. Lawrence project, probably the most economic in the United States, having the highest assumed (80%) load factor, greatest appurtenant population and greatest market, 1.5 mills; at Bonneville it is estimated at about the same; at Grand Coulee 3.0 mills. The question whether Bonneville and Grand Coulee projects (where one yardstick is half the length of the other) are to be consolidated into a single composite yardstick or are to compete for North Pacific industry as separate and independent yardsticks has not been determined. The estimated annual overhead and operating cost

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of producing energy at a combination of Muscle Shoals and Cove Creek projects, as estimated by the War Department upon the authority of the Chief of Engineers and accepted by the President of the United States in his veto of S. J. Res. 49, March 3, 1931 (Sen. Doc. No. 321) was 9.1 mills per KWH, an amount greatly in excess of the realization proposed by TVA under its so-called yardstick rates, a further demonstration of the ulterior objective of the program and of the averment that the schedules are sub-normal.

As any given yardstick development takes in additional

units, and reaches out into transmission and distribution, the certainty of misrepresentation in the use of the term becomes the more incontestable.

A material and variable factor is in the matter of interconnections between systems.

A further variable is in the matter of relationship to navigation, regulation of the use of water flow by the War Department or other authority, and like considerations.

During its consideration of the TVA Act the Senate of the United States was repeatedly assured by the author of the prevailing measure (Senator Norris) that the value or bearing of the Cove Creek development for water power could not be determined until after completion and actual test of operations. The site of that dam is even now being explored and cored in order to determine whether the underlying porous structures will effectively hold the water in storage.

While the cost of equivalent steam generation determines the financial desirability of any given hydro installation, this measure is itself variable according to the size of plant and other variables above mentioned.

Transmission is equally variable, dependent upon type, distance, voltage, potentials, duplication of circuits and other requirements of the load, including the element of radical mistakes in design as in the case of the Wilson-Norris transmission line now under construction by TVA.

Cost of distribution is even more variable, dependent upon type of construction, loads, number of customers, their density, varying from 2.1 customers per mile in Alabama service area to 244 customers per mile (Washington, D. C.) or upwards.

Other variables in plant cost include the questions of amortization, allowable return on investment.

Cost of operation is likewise variable, dependent upon the wholesale cost of power, taxes, number of customers, type of plants and system, cost of labor, etc.

In short, the term yardstick is obviously illusory in any case and as justifying the TVA program it is merely an illusory catchword in aid of the reason and purpose of the program, which is the promotion of public ownership of utilities by or under federal domination or control, and federal regulation of rates.

(39) Notwithstanding earlier statements of policy tending to disclaim intention to draw industries from other areas, the TVA is now, as publicly announced by it, emphasizing the attaching of industries under the low rates in competition with areas where rates are made or regulated by the State. The respondent Lilienthal's Chattanooga address (TVA release, April 22, 1934) is an announcement of this program. Effort is now being made by TVA to influence the location of industry under TVA rates, in direct open competition with other communities not enjoying a rate structure subsidized by the federal government.

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The fact of the existence of said rates is in and of itself a direct competitive and therefore regulatory and discriminatory factor. The existence of the sub-normal schedules in TVA area is, moreover, a definite discrimination against communities not enjoying the subsidized rates and is in violation of the provisions of Section 11 of the TVA Act, in the following respects:

1. The rates proposed to be charged by TVA to its customers of various classes, and the rates to consumers permitted by the TVA contracts with the municipalities

and other distributing customers, are substantially lower than the rate which is possible for the Power Company to charge distributors and consumers, respectively, in the area of its service, without substantial deficits under a fair return on prudent investment and substantial impairment of its reasonable earnings.

The existing schedules of Alabama Power Company have been expressly declared and publicly acknowledged by TVA and its agencies to be "low," "reasonable," and "cheap." By the contract of January 4, 1934 (Exhibit No. 5) TVA required the Tennessee Electric Power Company to introduce in its service area the domestic rate schedules long since in effect with Alabama Power Company. Those schedules have been expressly approved by TVA (EHFA) for the EHFA appliance promotion program.

It is unreasonable and unfair to expect or demand that Alabama Power Company, under the volume of consumption existing or in prospect in the area within any reasonable period, shall establish schedules competitive with said TVA schedules, either as to domestic or industrial consumers. The direct, necessary and inevitable effect of this situation is that in the remaining sixty counties of the State of Alabama, which will for the time being continue to be served by the Power Company, no industry, as to which the consumption of power constitutes the decisive factor in its cost of operation and as to which location is not forced by other conditions, would consider locating as compared with the area served under the TVA program.

This fact clearly threatens the stoppage of growth or gradual drying up of the Power Company's industrial load, and the transfer of that load to the TVA service area.

2. Such discrimination is not only a direct burden upon state regulation of rates and threatens an injury of the first magnitude towards the Power Company, but is moreover in violation of the express provisions of the TVA Act, Section 11 thereof declaring it to be the policy of the government

> "to distribute and sell the surplus power generated at Muscle Shoals equitably among the states, counties and municipalities within transmission distance. This policy is further declared to be that the project herein provided for shall be considered primarily as for the benefit of the people of the section as a whole," etc.

That requirement is inconsistent with the precipitate, political and inexcusable program of direct distribution to municipalities within the five and one-half counties of Alabama within the ceded area under the conditions which now threaten to prevail.

The only practicable method by which the surplus power generated at Muscle Shoals can at the present time be equitably distributed "among the states, counties and municipalities within transmission distance" and "for the benefit of the people of the section as a whole" is by distribution through facilities serving generally the described area. The policy of the Act is directly violated by the precipitate, restricted and subsidized distribution proposed by TVA.

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The Alabama Power Company, the Georgia Power Company, the Tennessee Electric Power Company, serving generally or extensively the three states named, have made public their willingness to purchase and distribute this energy equitably, their systems covering a large part of the area within transmission distance from Muscle

Shoals, but the said TVA did not attempt and would not consider any such equitable distribution of the energy, and has, in fact, not sought to put into effect any such distribution or, in fact, any equitable or non-discriminatory distribution.

(40) The discriminatory and subnormal schedules made applicable in TVA territory are, moreover, directly contrary to the established public policy in the State of Alabama as interpreted and administered by the Alabama Public Service Commission, and threaten dislocation of the entire economic history of power consuming industries of Alabama.

The Power Company's rate is and has been for over twenty years (representing the period of statewide introduction of energy) based on uniformity in all communities served, without reference to the origin of the power transmitted, whether at the Gorgas steam plant, the hydro-electric plants, or purchased at Muscle Shoals. This program of the Power Company has been affirmatively required or expressly approved by the Alabama Public Service Commission, which has recognized its beneficial effect in the extension of transmission lines into rural communities and in that "the transmission of power from the sources named to the smaller towns and villages of the state makes every such town and village a potential location for manufacturing industries" (Alabama Pipe Co. vs. Alabama Power Company [Sept. 30, 1927], 38 A. P. S. C. Reports, p. 251.) A consistent group of similar decisions by the Commission has definitely recognized that principle.

This established policy of the State of Alabama and of the Alabama Public Service Commission was unconditionally approved by the present Executive of the United

States in these words, referring to statewide equality in rate structures as adopted or proposed by the State of New York:

> "Also, we are taking one further step which has been taken by Public Service Commissions in several states, and that is the principle of not penalizing a man because he happens to live a fairly long distance from the main transmission line. The best example of that that I know is down in Alabama."

After describing the facts and principles leading up to the policy of the Alabama Public Service Commission as herein contended, the speaker proceeded:

> "Therefore, the Alabama Public Service Commission laid down the rule that just because a man happened to be born and brought up on a farm in southern Alabama was no reason for penalizing him * * *. The result is that the rates laid down * * * in the State of Alabama provide substantially the same rate in the southern part of the State as in the northern part of the State. * * * I believe that principle is being fairly well recognized today not only among Government Agencies but also among the more intelligent and more progressive of the utility people." (Conference of Governors, June 8, 1931.)

The policy, plan and program of TVA are accordingly not only in violation of Section 11 of the TVA Act, but are contrary to the public policy of the State of Alabama, and are arbitrary and oppressive in that they discriminate in favor of selected localities and confuse and demoralize the economic pattern upon which the market for electricity in Alabama has been built up under sanction of the State.

[37]

The injury to Alabama Power Company from this competitive violation of the policy declared by the Act and

the established public policy of the State is direct and proximate.

The proposed schedules and action of TVA tend directly to demoralize rate schedules in Alabama, to discriminate against the customers and the area which would continue to be served by the Power Company in the respects and manner above stated and thereby work direct injury to the Power Company at a critical period in the economic and industrial reconstruction in prospect. To deprive the Power Company and its service area of a fair opportunity to compete for the location of industries is a direct injury to that Company and the communities it serves.

The inauguration of the sub-normal schedules herein referred to directly and necessarily tends to widespread dissatisfaction of the Power Company's customers and of the public and public authorities of the areas remaining to be served by it and is, in effect, a mischievous interference by TVA with the Power Company's established business and trade relations, for an objective unlawful to TVA, viz.: the promotion of public ownership of distribution and regulation of utility rates and service by TVA.

(41) Complainants aver that the plan and program of TVA, in so far as it involves exclusion of Alabama Power Company from its existing service area and proposed further encroachments on that area, is arbitrary, unreasonable and invalid as to Alabama Power Company without reference to any question of power, for the following, among other reasons:

The Power Company has, under license from the federal government by direct Act of Congress or license issued by Federal Power Commission for a minimum term of fifty years from date of license (subject to condemnation or termination under the circumstances referred to below),

the right to distribute the energy created by the construction at the cost of the Power Company of hydro-electric plants at Lay, Mitchell and Jordan Dams on the Coosa River. The right of distribution appertains to the state-wide system of the Power Company into which the energy is pooled, including the area from which it is sought to be excluded under the circumstances herein averred.

The only methods provided under the licenses or grants by which the Power Company may be lawfully excluded from that right are (1) condemnation by the United States or any State or municipality, upon payment of just compensation, or (2) for violation of the terms of the license by the Power Company. The Power Company has not violated the licenses. It constructed the improvements in question and has thereby relieved the United States Government of heavy expenditure in furtherance of navigation in connection with and as a condition of its development of power, made with the consent of the State and under license or grant from the United States.

TVA, an agency of the federal government, is in every practical sense proposing to take the license contracts and the improvements erected pursuant thereto by taking the supporting market for the energy created at those plants, without condemnation or the payment of just compensation.

Complainants assert the right of Alabama Power Company under the respective licenses hereinafter referred to, to immunity from curtailment of the market area supporting said works, by the threatened program of TVA and its action complained of herein.

[38]

Curtailment of said market area, as immediately pro-

posed and as threatened with indefinite extension by TVA, will not only in effect result in a taking of the licenses or works constructed under the same without just compensation in violation of the terms of the license and of the Fifth Amendment to the Constitution, but also threatens a taking of property without due process. Complainants further aver that the action of TVA as an administrative board is so arbitrary and lacking in any lawful objective as to be invalid on that ground alone, in its relation to the Power Companies functioning under the licenses and grants above mentioned.

Complainants set out on the schedule hereto attached marked Exhibit No. 12 and expressly made a part of this bill of complaint as though set out herein, a statement of the facts as to the improvements, licenses, and expenditures of the Alabama Power Company in and about the matters referred to in this paragraph, under and pursuant to

1. Sections 3627-37, Code of Alabama of 1907.

2. Act of Congress approved March 4, 1907; 34 Stat. 1288; Lock 12—Lay Dam.

3. Alabama Public Utilities Act of 1920, Sec. 49 (Sec. 9795, Code of Alabama of 1923).

4. Federal Water Power Act (41 Stat. 1063; 16 U. S. C. 791-823): Duncan's Ripple—Mitchell Dam.

5. Federal Power Commission License No. 82, accepted by the Power Company June 25, 1921.

6. License of Federal Power Commission No. 618, issued Nov. 7, 1925: Lock 18—Jordan Dam.

(42) The program for the regulation of rates by TVA as complained of herein, is moreover in violation of the provisions of Article XIX of said License No. 82, providing that the licensee shall abide by such reasonable regu-

lation of the service to be rendered to the consumers of the power and of the rates and charges therefor

> "as may from time to time be prescribed by any duly constituted agency of the State in which the service is rendered or the rate charged."

In case there should not exist in such state any such agency or any agency to regulate the amount of securities to be issued by the Power Company, it was agreed as a condition of the acceptance of the license that jurisdiction should be conferred upon the Federal Power Commission, upon complaint of any person aggrieved or upon its own initiation, to exercise regulation and control over rates, regulations and security issues **until such time as the State should have provided a commission or other authority for such regulation and control.** There has at all times since the issue of said license been an administrative authority within the State of Alabama with jurisdiction to regulate and control rates, regulations and security issues.

The proposed regulations of service and rates and the threatened exclusion of the Alabama Power Company from the ceded area as herein complained of, is accordingly not only contrary to any valid right of TVA, but is expressly violative of the provisions and understanding of the license that such matters were to be subject to regulation of State authority.

[39]

The power from these various projects flows and was expressly intended under the grant and licenses to flow into the system of the Power Company and directly contributes to the pool of power from its system of steam and hydro-electric generating units from which the ceded area is supplied.

The blocking off of that area directly and necessarily curtails the market for power to be supplied by and the use and value of the projects covered by said licenses and contemplated by the Act of Congress approved March 4, 1907 (34 Stat. 1288).

(43) The proposed action and program of TVA and its entry into the general utility business in competition with or with the direct economic effect of driving Alabama Power Company out of the business is, moreover, arbitrary and invalid because of the conditions under which Alabama Power Company (through its wholly owned subsidiary, Muscle Shoals Hydro-Electric Power Company) conveyed to the United States the dam site and other properties at Muscle Shoals upon which the present Wilson Dam was constructed. These properties and the reasonable necessary expenditures for their utilization for the development of water power entailed an expenditure of approximately $500,000. In 1918 the War Department desired to acquire these rights for the immediate construction of the proposed Wilson Dam in the production of war nitrates. The value of the property could not be agreed upon, and the owner thereupon proceeded to grant the entire properties to the United States Government for a consideration of One Dollar for the specific purpose of production of war nitrates, stated in these words:

> "In times like these, however, such consideration must be secondary to the urgent needs of the nation to secure these properties immediately for the carrying out of the government project for the production of war nitrates, and we have accordingly determined to donate our lands to the government **for this purpose.**"

This offer was accepted by the Secretary of War on

February 20th, 1918, the properties were conveyed accordingly, and the Wilson Dam and hydro plant constructed forthwith.

Complainants aver that for the Tennessee Valley Authority, under these circumstances, to raid the market of the Alabama Power Company and drive it out of the Tennessee Valley and prospectively out of its remaining markets through the acts of coercion and through utilization of the properties thus conveyed for the conduct of a proprietary utility business, for promotion of municipal ownership of distribution systems and in order to regulate the rates of Alabama Power Company, is contrary to good morals, arbitrary and unlawful, and would constitute a violation of the purpose and intention upon which the property was tendered to and accepted by the United States.

(43-a) The respondent municipalities which have entered or propose to enter into contracts with TVA making permanent in their interest the TVA program under the circumstances herein averred have, with the exception of the City of Athens, no distribution systems of their own.

All of them except said City of Athens propose to enter into contracts with or grant franchises to Tennessee Valley Authority for the operation of an electric distribution system within their jurisdiction, under which at some time unknown to complainants and under conditions not as yet specifically made public, the respective systems proposed to be acquired by TVA from the Power Company, shall be conveyed to said municipalities, but reserving to TVA the right of recapture unless its domination of resale rates and various other conditions not constituting proper functions of federal authority are observed.

The City of Athens proposes to acquire certain of said properties described on Exhibit No. 1, and has entered or proposes to enter into contract with TVA subordinating its rates to TVA control.

The respective municipalities have no right thus to commit or contract away the police power of the State of Alabama. However, the proposed contracts, the covenants in the proposed transfers and the conditions of recapture proposed in the grants will practically if not theoretically result in domination by TVA of rates and other matters wholly within the police powers of the State.

The arrangement will, moreover, by reason of the insolvent or difficult financial condition of the respective towns result in the public service in question being transferred from a solvent agency subject to effective public regulation as to service, extensions and like essential matters, to insolvents beyond the reach of practical requirements or regulation under the police power of the State.

In as much as the rate schedules themselves proposed by TVA, to be perpetuated by contract between TVA and the respondent municipalities, are the sub-normal schedules herein complained of, they would, whether operated by TVA or nominally by the respondent municipalities under domination of TVA, be in violation of the public policy of the State as herein averred.

Said proposed transfers to the respondent municipalities are to be subject to recapture and with no paid up equity in the municipalities. It is not intended that the municipalities shall pay anything for the proposed or eventual transfers or obligate themselves financially other than to recognize a vendor's lien and claim against proceeds from operations, which would leave TVA the dominant beneficial owner indefinitely.

To the end aforesaid, said municipalities are proposing to take advantage of illegal, wrongful and ultra vires acts of TVA herein complained of, its duress asserted against Alabama Power Company, and its unlawful program.

In addition to that end they are committing, aiding or abetting acts designed and intended to intimidate or influence the Alabama Public Service Commission and the courts in the consideration of the program, and to boycott and penalize citizens in good faith challenging the validity thereof in the courts, by public meetings, denunciatory resolutions, threats of boycott, and similar action. Copy of a resolution adopted by the representatives of various of said towns at a meeting to denounce and condemn the Commission and such civil plaintiffs is attached hereto marked Exhibit No. 13 and made a part hereof. This resolution was unanimously adopted at a convention called for the purpose, attended by officials or representatives of respondents the Cities or Towns of Sheffield, Tuscumbia, Florence, Russellville, Leighton, Cherokee, Hartselle, Town Creek, Moulton, Red Bay, Courtland, Rogersville, Decatur, and Hillsborough, and by a responsible official of the Tennessee Valley Authority.

(44) Under the circumstances of duress and organized political or public clamor herein averred, the Alabama Power Company has been and is now helpless as a public utility to resist the results of the illegal action done and threatened as aforesaid, by reason of the fact that it has assumed that the consequences of resistance might be more severe than to yield to the illegalities averred. The action taken and threatened will, if not restrained, result in a practical denial to said Alabama Power Company of due process and of free access to the courts and to the admin-

istrative tribunals established by law, for consideration of the grave questions of public interest herein set out, threaten a destruction of the property of the Power Company without due process of law, and a taking of its property and business without just compensation.

[41]

(44a) The exchange feature of the contract of January 4, 1934 (Exhibit No. 5) is wrong and unjust in so far as the Power Company is concerned, and its exaction by TVA from the Power Company under the circumstances of duress herein averred was and is arbitrary, oppressive and illegal. The effect of said provision is to place the Power Company in a position of standby service, guarantee the TVA service against interruptions, and thus directly tend to entrench its competitive superiority, whereas if the Power Company refrained from entering into such arrangements with an agency furthering an unlawful program threatening the survival of Alabama Power Company, the said TVA would be dependent upon its own incompleted and inadequate systems, and would not be able to make as effective its threatened program.

TVA is proposing to pay no just or adequate consideration for said service. The arrangement is being exacted by duress, under the circumstances herein averred. This advantage to TVA was publicly announced by the latter in these words:

> "Perhaps as important advantages as any others which will be derived under this contract by the Authority and those who receive service from it are the provisions giving the Authority the right to use power under a plan known as 'interchange'. Without such an agreement, were the Authority to attempt to serve an area, it would be under the necessity not

only of building a transmission line to points to be served but also of protecting the continuity and reliability of that service by construction of a second, or return transmission line, back to the source of supply. This would involve very heavy capital expenditures. The power companies under this contract have agreed to make available their transmission facilities in such a way as to make unnecessary the construction by the Authority of such return or duplicate transmission facilities, with a huge saving to the Authority."

(45) In addition to the facts as to the inadequacy of the consideration forced on Alabama Power Company by the agreement of January 4, 1934, hereinabove averred in Section 25 of this bill of complaint, complainants aver that the said TVA has publicly announced in respect to that contract that it would make compensation for no intangible element of value in these words (January 5, 1934):

"Had the power companies which are parties to this contract been unwilling to sell these facilities at a fair price, or had they insisted on payment for intangibles or water, the Authority would have been under a definite mandate to construct duplicating facilities rather than submit to being 'held up.'"

The intangibles therein mentioned, excluded from consideration and referred to in Section 25 are those elements of value recognized by the Constitution and laws of the United States and the State of Alabama, for which valuable consideration was paid by the Power Company, in respect to which it has paid ad valorem property taxes to the State of Alabama for years (Revenue Code, 1929, Sec. 106; Revenue Act of 1923, Acts p. 152, Sec. 77) and which constitute elements of value which Congress itself may not exclude from the determination of just compensation as interpreted by the Supreme Court of the United States

(Monongahela Navigation Company v. United States, 148 U. S. 312).

The public acknowledgment of the duress applied to the Power Company and the extent of the fixed determination of TVA to take the market or duplicate service at ruinous cost to competing utilities and under circumstances of admitted duress are more clearly defined in the excerpts from the public announcements or statements of said TVA or its executive officers scheduled on Exhibit No. 4 hereto attached.

[42]

(46) On, to-wit, August 7, 1934, request in writing was made on behalf of the preferred stockholders of Alabama Power Company by a stockholder or stockholders included among complainants on behalf of themselves and all other preferred stockholders, that the Power Company itself file suit and take other corporate action to annul and terminate the said contract of January 4, 1934, and its contract relations with and its agency relation with said EHFA in furtherance of the program of the TVA herein complained of. Said request was presented to the Board of Directors of the Power Company at a meeting of the Board held on August 9th, 1934. The Board declined to authorize action by the corporation, as set out in a resolution of the Board giving its reasons, formally communicated to the stockholders making the request by a letter from the President of the Power Company dated August 11, 1934.

Like request was made by or on behalf of said stockholders of the Commonwealth & Southern Corporation, a party to the agreement of January 4, and the owner of all of the common stock issued by the Power Company, carrying voting control of the company. That corporation

(Commonwealth & Southern) was requested to co-operate with the stockholders in bringing about a meeting of the stockholders to consider the request. The Board of Directors had been also requested to take this action, and had declined.

The said Commonwealth & Southern Corporation in like manner declined to take action to that end, and advised that it was constrained to concur in the action of the Board of Directors in not challenging the TVA program and in submitting to the inexorable necessities which it appeared to entail. Its conclusion was stated in these words:

> "The Authority announced a power policy which, if carried to full fruition would have meant the total destruction of the equity of the operating company security holders. Under the circumstances it seemed to us to be the part of wisdom to make such concessions as were necessary in order to arrive at an amicable agreement with the T.V.A. You and I and all security holders of utility companies as well as a great many other people, believe that the destruction of private investment by government competition is a ruthless and uneconomic procedure. We, however, were faced with a fact—not a theory—the power, whether constitutional or not, was granted, the money appropriated, the instrumentality in being and to have attempted to contest the constitutionality of the Act might have led, in the event of failure or if long delayed, to the total destruction of the value of all the utility properties affected."

Immediately prior to the filing of this suit complainants caused an exact copy of this bill of complaint to be presented to the President of the Alabama Power Company, with the request that he reassemble a meeting of the Board. The request was declined, and complainants aver that it would be and is futile to expect the Board of Direc-

tors of the Power Company or said Commonwealth & Southern Corporation to take the action necessary to the protection of the interests of the corporation, as sought by the filing of this bill of complaint.

There is no time for delay pending further meetings of the Boards of Directors or further effort to assemble stockholders meetings. The transfer of the properties by the Power Company to TVA is imminent. The fourteen towns are pressing their public clamor. The hearing before the Alabama Public Service Commission in its Docket No. 6636 is set for September 18. It is essential that this bill of complaint be filed and constitute a lis pendens as to the properties before there are definite transfers.

[43]

(47) Complainants aver that they have no adequate remedy at law or otherwise than in a court of equity.

(48) The invalid purposes and objects of the Tennessee Valley Authority Act herein averred are so mutually connected with and dependent upon the other purposes and objects of said Act as conditions, considerations or compensations for each other, that the entire Act is invalid, void and of no effect.

In like manner, the agreements existing or proposed between TVA and the municipal respondents are all based and conditioned upon the unlawful covenant made or proposed that the municipalities will charge the rates stipulated by TVA and take and operate the properties subject to the various conditions as to rates and service proposed or required by TVA. TVA will not consider the purchase of the respective properties described on Exhibit No. 1 either for its own account or for transfer to the respective municipali-

ties except upon condition and with the understanding that TVA shall have the sole right, free of regulation by the State of Alabama, to fix the rates to consumers for electricity to be delivered thereby.

The business proposed by TVA by means of said properties is the business of an intra-state public utility, within the meaning of that term as employed in the statistics of Alabama relating to the regulation of utilities. The said properties are proposed to be acquired by TVA for and in connection with such utility business thus to be controlled by it and not otherwise.

Wherefore complainants aver that the proposed agreements are invalid in their entirety and that all of the respondents should be enjoined from any act in furtherance thereof.

(49) The Alabama Public Service Commission has set the application of Alabama Power Company for authority to transfer to TVA the transmission lines described in Exhibit No. 1 for hearing on October 23, 1934, the hearing on the application relating to the distribution systems being set for September 18th, as aforesaid. The said transmission lines and the distribution systems are interconnected. The distribution systems are served by the transmission lines. The transmission lines are of value only as serving said distribution systems. It would be arbitrary and destructive of the values for TVA to force under momentum of the duress already exerted, the splitting of the transmission lines from the distribution systems. Complainants aver, accordingly, that they are entitled to the interlocutory protection of the processes of this Court against the splitting of said systems in parts, as threatened by the procedure set in motion and pressed by TVA.

(50) Said lines and properties are fixed in and include easements and rights of way, and are real property situated in part in Limestone County and in part in the other counties referred to herein and in Exhibit No. 1.

[44]

**Prayer.**

Premises Considered, complainants pray that this court take jurisdiction of this suit and cause the said Alabama Power Company, Tennessee Valley Authority, Electric Home & Farm Authority, Inc., Chemical Bank and Trust Company, as Trustee, Guaranty Trust Company of New York, as Trustee, Arthur E. Morgan, Harcourt A. Morgan, David E. Lilienthal, Town of Ardmore, City of Athens, Town of Austinville, Town of Cherokee, Town of Courtland, Town of Elkmont, City of Decatur, Town of Falkville, City of Florence, Town of Hartselle, Town of Leighton, Town of Moulton, Town of Red Bay, Town of Rogersville, City of Russellville, City of Sheffield, Town of Town Creek, and City of Tuscumbia, to be made parties respondent hereto by the issue of process commanding them and each of them to appear herein, and to plead, answer or demur to this bill of complaint as required by law and the rules of this Court, including appropriate orders of publication and other notice as to the respondents Chemical Bank and Trust Company, as Trustee, and Guaranty Trust Company of New York, as Trustee.

Complainants further pray that pending final hearing herein this Court by interlocutory order, injunction or decree, enjoin and restrain the respondents and each of them, their officers, agents and all persons associating or agreeing with them, from proceeding with or making effective

any act and transaction complained of herein or in respect of which relief is prayed on final hearing, and grant such other interlocutory relief as may be necessary or proper to avoid damage and injury to complainants and to Alabama Power Company pending final decree herein and as may be necessary to grant full and complete relief by final decree.

Complainants further pray that upon final hearing this Court by decree herein grant and award to complainants the following relief:

I

(1) Adjudge and decree that complainants on behalf of themselves and all other preferred stockholders who may have joined herein are entitled to maintain this suit for the redress of wrongs by or done or threatened to the Alabama Power Company as averred herein.

(2) Adjudge and decree that in so far as Alabama Power Company is concerned, the contract dated January 4, 1934 (Exhibit No. 5 herein), the amendatory agreement dated February 13, 1934 (Exhibit No. 5-a herein), and the agreement dated August 9, 1934 (Exhibit No. 6 herein), were severally obtained under duress, contemplate objectives illegal or otherwise contrary to public policy, and are annulled; and enjoin Alabama Power Company from proceeding further with the execution thereof, and, in particular, from the abandonment of utility service, franchise or public undertaking or the transfer of properties as proposed or contemplated thereby and from entering into any other like or similar agreement with or making any other grant or transfer to the Tennessee Valley Authority.

(3) Adjudge and decree that the said contracts were and

are severally void and unenforceable by the Tennessee Valley Authority by reason of its violation of the law of Alabama with reference to the qualification of corporations not organized under the laws of Alabama engaged in or proposing proprietary functions in Alabama without complying with the laws of Alabama, as complained of herein.

(3-a) Restrain and enjoin Alabama Power Company from conveying and said Chemical Bank & Trust Company and Guaranty Trust Company of New York from releasing any of the properties described or referred to in Exhibit No. 1 to Tennessee Valley Authority or its assigns or to the United States under the circumstances proposed or threatened as complained herein.

[45]

II

(4) Restrain and enjoin Alabama Power Company from any transfer of any part of its properties or system to the Tennessee Valley Authority, its privies or assigns, for the purpose of enabling the use thereof in the transmission or distribution of electric energy within the State of Alabama under any plan or program looking to the sale to consumers of the energy to be distributed over such system at rates or under conditions stipulated or controlled by Tennessee Valley Authority and in effect constituting regulation or control of such rates by Tennessee Valley Authority.

(5) Adjudge and decree that the plan and program of the Tennessee Valley Authority for the sale or distribution of energy created at Wilson Dam or at any other federal project in the Tennessee Basin at rates for sale or resale to the general public stipulated, fixed or controlled by Tennessee Valley Authority, is in effect regulation of such

rates, and beyond any lawful power or function of the Tennessee Valley Authority or of the federal government in relation to navigation or otherwise.

(6) Adjudge and decree that the necessary effect of control or dictation of rates to the general public by Tennessee Valley Authority is regulation and control of such rates, and is not a lawful function of such Tennessee Valley Authority in respect to property not subject to the police jurisdiction of the United States.

(7) Adjudge and decree that where the federal government proposes to improve navigable streams by dams including hydro-electric units under the circumstances complained of herein, it may not in the guise of furthering navigation create water power grossly in excess of the requirements of navigation for direct or controlled distribution as a utility to the general public by or at rates dictated or controlled by the federal government or directly engage in utility distribution in respect thereof, such control and activity having no lawful and reasonable relation to the federal power as to navigation.

III

(8) Adjudge and decree that the Tennessee Valley Authority Act is in substantial conflict with the Constitution in the respects herein complained of and is void and that all transactions by TVA under color of said Act and herein complained of are likewise void and should be restrained in so far as they threaten injury and damage to Alabama Power Company as complained of herein.

(9) Declare by decree herein that the TVA Act is an unconstitutional attempt to create government by a corporation with unlimited power to determine and execute

policies and functions which are governmental and non-delegable, the effect of the delegation being to remove the exercise of such functions from effective control by Congress itself or from effective reversal by political action; and by such decree restrain the corporate actions of TVA in so far as they threaten injury and damage to the Power Company as complained of herein.

IV

(10) Adjudge and decree that the plan and program being administered by TVA is in the respects herein particularized proprietary and individual in character and not governmental and is ultra vires as not authorized by the Tennessee Valley Authority Act and not within any lawful function of Congress.

[46]

V

(11) Restrain acquisition or construction and operation of electric utility distribution systems in Alabama by TVA in competition with or having the effect of displacing or superseding the public service now being rendered by Alabama Power Company.

(12) Restrain "yardstick" regulation by Tennessee Valley Authority (herein sometimes referred to as TVA) of the intra-state electric utility business in Alabama.

(13) Restrain the use by TVA of federal funds in furtherance of the objectives above stated.

(14) Restrain the TVA from conducting organized propaganda, conducted at federal expense, to promote a campaign for public ownership and operation of electric util

ties under contract or in privity with TVA, or dominated by TVA.

(15) Restrain domination or control by TVA of utility operations by municipalities in Alabama through the device of sales under contract reserving to TVA control of rates, service or utility policies.

(16) Restrain action by TVA to interfere with or interrupt the business, service and contract or utility relations of Alabama Power Company, with the design and purpose of furthering a yardstick or other power distribution and regulation program of TVA.

(17) Restrain the sale by TVA of electricity to or for distribution to consumers at the rates presently quoted or stipulated by TVA, being rates not justified by a reasonable allocation of investment to the production of power or cost of production and delivery and constituting rates arbitrarily devised for the promotion of an unlawful plan and program.

(18) Restrain TVA and respondent municipalities from inaugurating and maintaining a schedule of rates subnormal and out of relation to the actual total cost of the service and so out of line with the general level of utility rates in Alabama as to be contrary to the established public policy of the State of Alabama as to rate schedules, under which industry has been extensively decentralized, general public rights have attached and discrimination avoided, viz: that rates shall be substantially uniform as to like classes of customers throughout the state.

(19) Restrain TVA, in its threatened pursuit of a purely political or economic objective having no reasonable relation to navigation and from inaugurating a plain and

systematic discrimination against that part of the State o Alabama not served by it and which can not be serve by it without extending its unlawful and ultra vire functions.

(20) Restrain TVA from setting up a "loss leader" sys tem of rates for a selected area in order to precipitate entrench and further the so-called yardstick regulatio program beyond practical retreat.

(21) Restrain the use by TVA of federal funds to co struct or purchase electric utility distribution system either for direct operation as a utility by TVA or fo transfer of the respondent municipalities under control o rates or service by TVA.

[47]

(22) Restrain Alabama Power Company from partici pating with TVA in any transaction involving the recei or handling by Alabama Power Company of federal fund being unlawfully used or disbursed by TVA under ci cumstances that tend to subject Alabama Power Compan to penalties, recoveries, fines or forfeitures by reason o such participation.

(23) Restrain Alabama Power Company and the othe respondents from participating in, approving or givi effect to any of the unlawful, wrongful or ultra vires ac of TVA herein complained of.

VI

(24) Restrain execution by TVA of a program of hydr electric power development on the Tennessee River an its tributaries planned and designed primarily for gener tion of power, clearly and indisputably in excess of a

present or future requirements of navigation, adopted and proposed primarily as a power program and having no direct, necessary or reasonable relation to navigation or other lawful function of the federal government.

(25) If and to the extent that any work by TVA should be held to be lawful under any theory, so limit the pending work of construction at Cove Creek and Wheeler Dams and the final plans therefor, and so limit the TVA plan and program in respect to the generation, transmission and sale of electric power to be created at such dams, if any, as to require same to conform to the lawful limitations on federal power and in such wise as to restrain the said TVA from the abuse of its lawful corporate powers and functions.

VII.

(26) Enjoin the respondent municipalities from entering into or executing any contract or agreement with TVA for the purchase of electricity from TVA for distribution to the public at schedules prescribed by or subject to the control of TVA.

(27) Enjoin the respondent municipalities from aiding or abetting in any manner the TVA in making effective any of the wrongs and injuries done or threatened by TVA as complained of herein.

Complainants further pray that by final decree herein each and all of the respondents be required to make restitution to Alabama Power Company of any and all properties of the latter which may have been acquired pending final decree, and restore the status quo as to the ownership of said property as existing prior to the acts of duress and contracts herein complained of; that the respondents and each of them who may under any circum-

stances have participated in any exclusion of Alabam Power Company from its utility operations or service are be made to account for the loss and injury to the Alabam Power Company in respect thereof; that none of its fran chises or public undertakings be held to have lapsed o been abandoned by reason of anything done or suffered by said Alabama Power Company pending final decre herein;

[48]

that Tennessee Valley Authority be enjoined an restrained from impairing the value or use by Alabam Power Company of the licenses granted by Federal Powe Commission as averred herein; that all of the respondent be enjoined and restrained from acts tending to intimidat administrative agencies of the State in connection with th matters involved herein or free recourse to the Courts.

And, in general, complainants pray that they be grante such other, further or different relief as may seem mee and just in the premises.

Respectfully submitted,

GEORGE ASHWANDER,
WM. M. BROWDER,
A. C. GARBER,
JOSEPH R. COOK, JR.,
BESSIE M. GRAY,
C. H. GRAY,
CLIFFORD L. LAMAR,
MARY P. LONDON,
F. W. MURRAY,
EUGENE C. MORGAN,
JOSEPH A. NORMAN,
C. L. TORBERT,
R. H. WOODROW,
TUTWILER INVESTMENT COMPANY,
By CABANISS & JOHNSTON,
Solicitors.

FORNEY JOHNSTON,
JELKS H. CABANISS,
JOS. F. JOHNSTON,
Of Counsel.

Note: Respondents and each of them are required to answer each and all of the averments of this bill of complaint, as set out in Sections (1) to (50), both inclusive, but not under oath, answer under oath being hereby waived.

CABANISS & JOHNSTON,
Solicitors for Complainants.

[49]

State of Alabama }
Jefferson County. }

Before me, the undersigned authority, in and for said County and State, this day personally appeared Al C. Garber, who is known to me, and who, being by me first duly sworn, doth depose and say that he is one of the parties complainant in the foregoing bill of complaint, that he has read the same, and that the facts stated in said bill of complaint are true as therein averred. and that where averred upon information and belief, affiant is informed thereof, and verily believes the same to be true.

AL C. GARBER

Sworn to and subscribed before me on this 12th day of September, 1934.

(Seal) Mrs. C. R. Hartley,
Notary Public, Jefferson County, Alabama.

## EXHIBIT NO. 1.

**Properties of Alabama Power Company Proposed to Be Transferred to Tennessee Valley Authority Under Agreement Dated January 4th, 1934.**

(Referred to or included in application before Alabama Public Service Commission in Docket No. 6604.)

(1)

All low tension (44 KV or lower) transmission lines, substations (including the high tension station at Decatur and the Sheffield steam plant station) and all rural lines and rural distribution systems in the Counties of Lauderdale, Colbert, Lawrence, Limestone, Morgan (excluding the Hulaco area), north half of Franklin (including the town of Red Bay), and the territory in the northern part of Cullman served by a certain line of Alabama Power Company extending south from Decatur, all in the State of Alabama, said property being more particularly described hereunder.

(2)

### Primary Substations

| Primary Substations | Description |
|---|---|
| Nitrate Plant #2—110/44 kv | 3–4500 kva. 110-44 Transf; 1–20,000 kva. regulator. |
| Wilson Dam | Misc. Insulators & Conductors |
| Decatur | 3–2,500 kva. 110-44 kv. Transf; 2–46 kv. breakers. |

(3)

**44 KV Transmission Lines**

| 44 Kv. Lines | Description |
|---|---|
| Hobgood to Russellville-Rockwood | Approximately 16.8 Mi. 2/0 Copper Std. and 8.5 Mi. 1/0 ACSR Pole Cap |
| Hobgood to Mississippi State Line | Approx. 28.4 Mi. #1 Copper Std. 2 Cross Arm |
| Hobgood to Courtland to Moulton | Approx. 23.3 Mi. #4 Copper Std. 2 Cross Arm |
| Hobgood to Nitrate Plant #2 and Florence Central Substation | Approx. 5.5 Mi. #1 Copper Std. and 3 Mi. 203200 on ACSR 4/0 and 2/0 copper. |
| Decatur Central Sub. to L. & N. Shops to Flint | Approx. 5.9 Mi. #4 Copper and 1/0 ACSR Misc. |
| Flint to Hartselle | Approx. 7 Mi. #4 Copper |
| Decatur Central Sub. to Cedar Lake to Madison | Approx. 17 Mi. #4 and #1 copper and 1/0 ACSR Misc. |
| Belle Mina to Athens | Approx. 14.5 Mi. #4 Copper Std. 2 Cross Arm |

(4)

**44 KV Substations**

| 44 Kv. Substations | Description |
|---|---|
| Red Bay (22 Kv.) | 3–75 kva. 1 Unregulated Circuit |
| Waco Central | 3–1000 kva. 1 Unregulated Circuit |
| Alabama-Rockwood Company | 3–333 kva. 2 Unregulated Circuits |
| Leighton Central | 3–150 kva. 1 Unregulated Circuit |
| Town Creek Central | 3–200 kva. 1 Unregulated Circuit |
| Courtland Central | 3–200 kva. 2 Unregulated Circuits |

| 44 Kv. Substations | Description |
|---|---|
| Moulton District | 4–200 kva. 2 Unregulated Circuits |
| Hobgood Switching Station and Substation | Land is not included |
| Colrock Central | 3–200 kva. 2 Unregulated Circuits |
| Cherokee Central | 3–200 kva. 1 Unregulated Circuit |
| Ala. Rock Asphalt (Margerum) | 3–200 kva. 1 Unregulated Circuit |
| Mississippi Power Meter. Eqpt. (Margerum) | 4–Inst. |
| Florence Central | 3–1000 kva. and 3–500 kva. 11 kv. Sub. 3 Regulated— 1 Unregulated Circuits |
| East Florence | 4–250 kva. 1 Unregulated Circuit 1–Ex. Switch Bay |
| Goodyear-Decatur Company | 3–1500 kva. |
| Decatur Central | 3–1000 kva. 2 Regulated and 2 Unregulated Circuits. Underground LV Cables |
| L. & N. Shops | 3–300 kva. 1 Unregulated Circuit |
| Flint Central | 3–40 kva. LT Fuses |
| Hartselle Central | 3–250 kva. 1 Regulated and 1 Unregulated Circuit 2.3 kv. 4–150 kva. 1 Unregulated Circuit, 11 kv. |
| Belle Mina Central | 3–150 kva. 1 Unregulated Circuit |
| Athens District | 4–1000 kva. 3 Unregulated Circuits |

(5)

**Rural Distribution Systems**

| District | Description |
|---|---|
| Decatur | Flint, Trinity, Moulton Heights, etc. |
| Hartselle | Hartselle-Falkville Line<br>Falkville-Eva-Fairview<br>Hartselle-Decatur Highway<br>Hartselle-East Pike |
| Russellville | Russellville-Hester<br>Waco-Hovater |
| Courtland | Courtland-Moulton-Decatur Highway<br>Courtland-Wheeler-Hillsboro |
| Leighton | Fennell and Alexander Exts. |
| Cherokee | Barton-Barton-McWilliams |
| Sheffield | Florence-Weeden Ext. |
| Belle Mina | Greenbriar<br>Decatur Highway<br>Tennessee Valley Experimental Farm |
| Rogersville | Florence-Rogersville<br>Anderson-Lexington |
| Athens | Athens-Tanner<br>Athens-Ardmore<br>Athens-Capshaw<br>Athens-Elkmont |

(6)

**Property Located at Wheeler Dam Site**

Also approximately 1643 acres of land in Lauderdale and Lawrence Counties, Alabama, viz.:

Certain lands in Section 4, Township 35, Range 8 West, Lauderdale County, Alabama; certain lands in Sections 14, 15, 16, 17, 20, 21 and 23, Township 35, Range 8 West, Lawrence County, Alabama; heretofore acquired by and conveyed to Alabama Power Company; said lands com-

prising dam site No. 3 on the Tennessee River and adjacent property, otherwise known as the Joe Wheeler Dam Site on the Tennessee River.

(7)

**Property Proposed to Be Conveyed by Alabama Power Company to Tennessee Valley Authority Under Contract of August 9, 1934, Supplementing or in Pursuance of Contract Dated January 4, 1934. Referred to in Application Before Alabama Public Service Commission in Docket No. 6636.**

The urban distribution systems of Decatur (which includes Albany, which was merged into Decatur by Act of Legislature), Austinville, Moulton, Hartselle, Falkville, Courtland, Town Creek, Leighton, Cherokee, Sheffield, Tuscumbia, Florence, Red Bay and Russellville, Alabama, consisting of all poles, wires, cross arms, pins, insulators, guys, transformers, structures, primary and secondary conductors, customers' meters, customers' services, customers' appliance wiring, and all other miscellaneous devices now connected with said urban distribution systems, and all rights of way, easements, permits, licenses and unexpired franchises heretofore acquired by Vendor, and forming a part of such urban distribution systems insofar as transferable.

## EXHIBIT NO. 2.

### Exccutive Message—April 10, 1933.

Tennessee Valley Development—Muscle Shoals
(H. Doc. No. 15)

To the Congress:

The continued idleness of a great national investment in the Tennessee Valley leads me to ask the Congress for legislation necessary to enlist this project in the service of the people.

It is clear that the Muscle Shoals development is but a small part of the potential public usefulness of the entire Tennessee River. Such use, if envisioned in its entirety, transcends mere power development: it enters the wide fields of flood control, soil erosion, afforestation, elimination from agricultural use of marginal lands, and distribution and diversification of industry. In short, this power development of war days leads logically to national planning for a complete river watershed involving many States and the future lives and welfare of millions. It touches and gives life to all forms of human concerns.

I, therefore, suggest to the Congress legislation to create a Tennessee Valley Authority—a corporation clothed with the power of Government but possessed of the flexibility and initiative of a private enterprise. It should be charged with the broadest duty of planning for the proper use, conservation, and development of the natural resources of the Tennessee River drainage basin and its adjoining territory for the general social and economic welfare of the Nation. This authority should also be clothed with the necessary power to carry these plans into effect. Its duty should be the rehabilitation of the Muscle Shoals de-

velopment and the co-ordination of it with the wider plan.

Many hard lessons have taught us the human waste that results from lack of planning. Here and there a few wise cities and counties have looked ahead and planned. But our Nation has "just grown." It is time to extend planning to a wider field, in this instance comprehending in one great project many States directly concerned with the basin of one of our greatest rivers.

This in a true sense is a return to the spirit and vision of the pioneer. If we are successful here we can march on, step by step, in a like development of other great natural territorial units within our borders.

Franklin D. Roosevelt.

The White House,
April 10, 1933.

(Pages 1407-8, Congressional Record, April 10, 1933,
73rd Congress, 1st Session)

## EXHIBIT NO. 3.

(Public Announcement by Tennessee Valley Authority.)
August 25, 1933.

### The Power Policy of the Tennessee Valley Authority.

1. The business of generating and distributing electric power is a public business.

2. Private and public interests in the business of power are of a different kind and quality and should not be confused.

3. The interest of the public in the widest possible use of power is superior to any private interest. Where the private interest and this public interest conflict, the public interest must prevail.

4. Where there is a conflict between public interest and private interest in power which can be reconciled without injury to the public interest, such reconciliation should be made.

5. The right of a community to own and operate its own electric plant is undeniable. This is one of the measures which the people may properly take to protect themselves against unreasonable rates. Such a course of action may take the form of acquiring the existing plant, or setting up a competing plant, as circumstances may dictate.

6. The fact that action by the Authority may have an adverse economic effect upon a privately-owned utility, should be a matter for the serious consideration of the Board in framing and executing its power program. But it is not the determining factor. The most important considerations are the furthering of the public interest in

making power available at the lowest rate consistent with sound financial policy, and the accomplishment of the social objectives which low cost power makes possible. The Authority cannot decline to take action solely upon the ground that to do so would injure a privately-owned utility.

7. To provide a workable and economic basis of opertions, the Authority plans initially to serve certain definite regions and to develop its program in those areas before going outside.

8. The initial areas selected by the Authority may be roughly described as:

(a) The region immediately proximate to the route of the transmission line soon to be constructed by the Authority between Muscle Shoals and the site of Norris Dam.

(b) The region in proximity to Muscle Shoals, including northern Alabama and northeastern Mississippi.

(c) The region in the proximity of Norris Dam (the new source of power to be constructed by the Authority on the Clinch River in northeast Tennessee).

At a later stage in the development it is contemplated to include, roughly, the drainage area of the Tennessee River in Kentucky, Alabama, Georgia and North Carolina, and that part of Tennessee which lies east of the west margin of the Tennessee drainage area.

To make the area a workable one and a fair measure of public ownership, it should include several cities of substantial size, (such as Chattanooga and Knoxville) and, ultimately, at least one city of more than a quarter million, within transmission distance, such as Birmingham, Memphis, Atlanta, or Louisville.

While it is the Authority's present intention to de-

velop its power program in the above-described territory before considering going outside, the Authority may go outside the area if there are substantial changes in general conditions, facts, or governmental policy, which would necessarily require a change in this policy of regional development, or if the privately-owned utilities in the area do not cooperate in the working out of the program.

Nothing in the procedure here adopted is to be construed in any sense a commitment against extending the Authority's power operations outside the area selected, if the above conditions or the public interest require. Where special considerations exist, justifying the Authority going outside this initial area, the Authority will receive and consider applications based on such special considerations. Among such special considerations would be unreasonable high rates for service, and a failure or absence of public regulation to protect the public interest.

9. Every effort will be made by the Authority to avoid the construction of duplicate physical facilities, or wasteful competitive practices. Accordingly, where existing lines of privately-owned utilities are required to accomplish the Authority's objectives, as outlined above, a genuine effort will be made to purchase such facilities from the private utilities on an equitable basis.

10. Accounting should show detail of costs, and permit of comparison of operations with privately-owned plants, to supply a "yard-stick" and an incentive to both private and public managers.

11. The accounts and records of the Authority as they pertain to power, will always be open to inspection by the public.

## EXHIBIT NO. 4.

### Representative Public Announcements and Releases by Tennessee Valley Authority as to the Scope and Purpose of Its Program.

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**As to Power Development as a Primary Function.**

1. "There are two avenues open for the Authority to afford power service. The first is to bargain with existing private lines for service on a rate schedule to be established. The second is to build its own lines, serving groups of municipalities in the order of their application insofar as possible."—July 24, 1933.

2. "The Authority is not engaged in a punitive expedition against the utilities. The Authority is an instrument of the people of the United States. It is charged with the duty of carrying out a national power policy * * *. The power program of the Authority is an integral part of a larger policy for the economic development of the United States."—October 17, 1933.

3. "The Tennessee Valley Authority Act marks the beginning of a new national power policy and national power program. This new national policy has two major objectives. The first objective is more effective protection of the public interest, by the setting up of a measure of public operation of power as a 'yardstick'. The second objective of this new national policy is a greatly increased use of electricity in the homes, the farms, and the factories of the United States—an electrified America.

"The President and the Congress have set themselves to the task of putting to work the vast sources of elec-

tricity which lie idle and unused. We are working toward no less a goal than the electrification of America. * * *

"The power program of the Authority is a crucial part of its plans for immediate action and of the long range program for the development of this region."—November 11, 1933.

4. "A little more than five months have elapsed since the directors of the Tennessee Valley Authority were appointed and confirmed by the Senate, the necessary appropriations passed, and the corporation organized. * * * A power program, a program for the development of fertilizers, and a general program of planning, had to be formulated, as well as an immediate construction program."—November 21, 1933.

5. "* * * the economy of electric power in the Tennessee Valley area will depend much on large scale developments that are designed and operated as single integrated systems. The entire Tennessee River system, with its thousands of miles of streams, should be under one control and ownership, which means government ownership."—November 21, 1933.

6. "Is the Authority concerned only with power at Muscle Shoals? The Authority is concerned with the power development of the valley region as a whole. It is authorized to construct such dams in the area as it deems necessary, and to generate and distribute power from them."—December, 1933.

7. "The power program of the Authority is an effort in a limited area to bring about a cheap and ample supply of power on a self-supporting basis, as one of the several conditions necessary to an enlightened and wholesome

economy in the region it is trying to serve."—December 5, 1933.

8. "The Tennessee Valley Authority has decided that development of the Aurora Dam on the Tennessee river should be a part of the Authority's plan for an integrated power program embracing the entire Tennessee river basin."—December 18, 1933.

9. "The arrangement, embodied in a 16-page document, will further the power policy of the President and Congress, according to a statement issued tonight by David E. Lilienthal, director in charge of power."—January 5, 1934.

10. "The essence of this agreement is the recognition by the power companies who are parties to the arrangement that the TVA is under a duty to operate a public power business, directly and through public agencies, in order to provide a public 'yardstick' of the fairness of the rates charged by privately owned utilities."—January 5, 1934.

11. "When we carry this program into every town and city and village, and every farm throughout the country, we will have written the greatest chapter in the economic, industrial and social development of America."—January 14, 1934.

12. "The Tennessee Valley Authority is definitely committed to an extensive program of rural electrification." —January 20, 1934.

13. "For instance, there is the matter of water power development. The Tennessee River system drains 40,000 square miles. It includes thousands of miles of streams, and a potential power development of several million horse power. In the past, individual power projects in

this river system have been developed without relation to each other. * * * The enormous social waste of isolated developments must be eliminated. This means unified planning on a large scale."—February 7, 1934.

14. "The TVA has under way, as you know, a comprehensive program for the development of the power resources of the Tennessee River and its tributaries. No more ambitious program of hydro-electric development has ever been actually undertaken in this country. * * *

"As you know, we have started with the nucleus of Wilson Dam at Muscle Shoals. Within two years two more great dams will be completed—one, the Norris Dam on the headwaters of the Clinch River near Knoxville; the other, the Joe Wheeler Dam just above the Wilson Dam in Northern Alabama. Four other major dams of various types will probably be approved for early construction. A large staff is now planning the dam-building program for the next decade."—April 22, 1934.

15. "I AM VERY DEFINITELY OF THE OPINION THAT IT IS THE AUTHORITY'S DUTY TO ENCOURAGE AND STIMULATE THE GROWTH OF LARGE-SCALE INDUSTRY IN THE TENNESSEE VALLEY AREA. WE ARE MAKING PROVISION FOR ONE OF THE LARGEST HYDRO-ELECTRIC DEVELOPMENTS IN THE WORLD, WITH A POTENTIAL THREE MILLION HORSE POWER AVAILABLE."—April 22, 1934.

16. "The Authority is interested not merely in the expansion of its own electric sales; it is interested in increasing the consumption of electricity throughout the South in disregard of public or private ownership."—May 17, 1934.

17. "Surveys are under way to determine the most feasible sites for additional dams on the Tennessee River and tributaries, Arthur E. Morgan, Chairman of the TVA, announced today."—July 1, 1934.

**As to "Yardstick" Regulation (in Addition to Foregoing).**

18. "The Authority intends to use Muscle Shoals as a 'yardstick' to determine the relative costs of public and private power operation * * *."—June 30, 1933.

19. "Finally, in 1933, at President Roosevelt's suggestion, provision for the public ownership and operation of Muscle Shoals was incorporated in the Tennessee Valley Authority law. This provision may make possible the carrying out of one of President Roosevelt's policies—that of providing a publicly owned and operated power system as 'a yardstick' by which to measure the relative economy and efficiency of public and private ownership and operation."—August 16, 1933.

20. "What the Authority is trying to do in its power program is to set up an area for power operations which will be on a comparable basis with typical private operations. To set up such a 'yardstick' the Authority obviously must undertake to serve an area which is large enough and sufficiently concentrated, with enough population density and with a sufficiently diversified industrial, commercial and residential load to provide a fair test. As business men it is apparent to you that if the Authority is only to serve the parts of a territory which a private utility has not chosen to serve, or is to serve only sparsely populated areas, the result of our operations cannot possibly be set up as a measuring rod. The Authority will necessarily have to un-

dertake to serve an area of concentrated industrial territory, good farms and favorable distribution possibilities. It will, therefore, be necessary to include several cities of fair size in the area. The people of Knoxville and Birmingham are soon to vote on the acquisition of their distributing systems. We are now constructing a tie line between Muscle Shoals and the new dam at Cove Creek and we propose to enter into contracts with municipalities and other agencies desiring this service in the territory between those two points.

"Obtaining this fair market in which to sell power, seems to be in sight, in view of the interest shown by about one hundred fifty municipalities. In fact, the problem of choosing between applicants will apparently be a real one."—September 28, 1933.

21. "It was with such a background that Congress passed the Tennessee Valley Authority Act, and set up a measure of public operation of the power business. This public operation is to serve as a yardstick by which to measure the fairness of electric rates. It has an additional function. It is a reminder that electricity performs a public service. It is a reminder that unless that business is conducted by private corporations with fairness, without financial jugglery and with a due sense of responsibility to the paramount public interest, that the public at any time may itself assume the function of providing itself with this necessity of community life."—November 11, 1933.

22. "Under the agreement the President's power 'yardstick' is set up in initial form, and immediate Muscle Shoals power service is provided to householders and farmers in the Tennessee Valley."—January 5, 1934.

23. "The first duty of the Tennessee Valley Authority in

its power program is to set up what the President has called a 'yardstick' by which to measure the fairness of electric rates. It has an additional function. It is a reminder that unless that business is carried on by private corporations with a due sense of responsibility to the paramount public interest, that the public, at any time may assume the function of providing itself with this necessity of community life."—April 25th, 1934.

**As to the Promotion of Public Ownership as a Primary Purpose.**

24. "To you who are investors in public utility securities, I want to speak very frankly: After long deliberation, a national policy has been determined upon whereby a limited example of public operation of the power business is to be set up and to be given a chance to show what it can do. This is now the nation's policy."—October 17, 1933.

25. "Perhaps the most important factor in insuring a low cost for hydro-electric power in this region is the fact that the distribution of this power to the factories and homes and farms, for the most part, will be in the hands of public agencies. Industries seeking to use large blocks of hydro-electric power in the Tennessee Valley will not be forced to support dizzy towers of inflated capitalization. They will not have to pay for the financial misdeeds of the builders of utility pyramids. Under public distribution of power with centralized accounting, control and supervision in the hands of a regional authority, there will be the greatest incentive to economy and managerial efficiency. Each community will try to make its record better than that of its neighboring community."—April 22, 1934.

**As to Regulation of Utilities, Rates and Practices as a Primary Function.**

26. "The public must protect its interests in so vital a force. There are various expedients to accomplish this result. One is by commission regulation. It is pretty well recognized that regulation has not been entirely adequate to protect the public interest, and so to supplement regulation, Congress has provided for a measure of public operation on a limited scale. This public operation is to serve as a yardstick by which to measure the fairness of electric rates. It has an additional function. It is a reminder that electricity is a public service and that unless it is exercised by private corporations with fairness, with efficiency, without financial jugglery and with a due sense of responsibility to the paramount public interests involved, that the public, at any time, may itself assume the function of providing itself with this necessity of community life."—September 28, 1933.

27. "Is it any wonder then that the people are determined to maintain the most vigilant public control of this liberating force? Various expedients for the public's protection have been adopted. One is regulation by state commissions. It is generally recognized that such regulation has not been entirely adequate to protect the public interest. And so, to supplement regulation, Congress has provided for a measure of public operation on a limited scale. This public operation is to serve as a yardstick by which to measure the fairness of electric rates."—October 17, 1933.

28. "Now this is what had been going on in the United States. Regulations by commissions had in many states proved ineffectual. In some states it was perfectly ob-

vious that the regulators were not regulating the utilities, but in effect, utilities were regulating the regulators. In other words, the regulatory commissions were doing an honest and sincere job, but were hampered by the inherent and interminable procedure of regulation.

* * * * * * *

"Regulation by commissions has not proved adequate. To supplement regulation by commissions, Congress passed the Tennessee Valley Authority Act. The policy written into this Act does not represent an assault upon private management and ownership of public utilities, but it is a determined attack on private mismanagement of the public business of power. The Tennessee Valley Act is a well considered effort to prevent a recurrence of the looting of the power business at the expense of the people back home—consumers and investors alike.

* * * * * * *

"This public operation is to serve as a yardstick by which to measure the fairness of electric rates. It has an additional function. It is a reminder that electricity performs a public service and that unless it is exercised by private corporations with fairness, with efficiency, without financial jugglery and with a due sense of responsibility to the paramount public interests involved, that the public, at any time, may itself assume the function of providing itself with this necessity of community life."—November 7, 1933.

29. "And so, to supplement regulation by commissions, Congress passed the Tennessee Valley Authority Act. This Act is not an assault upon private ownership and management of public utilities. But it is a determined attack on private mis-management of the public business of power

at the expense of the people back home—consumers and investors alike."—November 11, 1933.

30. "A drastic revision downward of electric rates is an essential part of this program. Such drastic reductions in electric rates, in our judgment, are essential to any substantial increase in the use of electricity for domestic, farm and industrial purposes. * * *—November 11, 1933.

31. "We believe that definite plans of the Authority now in process of execution afford the quickest means of accomplishing a thorough revision of rate schedules and rate theories throughout the country * * *.—November 11, 1933.

32. "The Tennessee Valley Authority bears two major relationships to business. One is that of a regulatory agency. The second is that of a stimulant to business. * * *

"There has been a growing feeling that this method (regulation by Commission) of expressing the regulatory relation of the government to the public utility business was inadequate to meet the needs of the situation. These critics insisted that commission regulation by and large, had been ineffective; that in many states instead of the regulators regulating the utilities, the utilities were regulating the regulators; that financial abuses of the most lurid sort had taken place despite regulation; that the processes of regulation were too slow; and that the great technological savings in the field of electricity had not been passed on to the consumers.

"The power policy written into the Tennessee Valley Authority Act represents an attempt to regulate public utilities not by quasi-judicial commissions, but by competition. The Act definitely puts the Federal government into the business of rendering electric service. The Au-

thority is required to acquire a market, to set up an area in which to conduct its operations. The results of these operations in this limited area are intended to serve as a 'yardstick' by which to measure the fairness of the rates of private utilities, and to prevent destructive financial practices by private utilities. In carrying out this competitive relation between the Federal government and the private business of electricity, the wastes of competition are to be eliminated, and the regulatory function of competition emphasized. In other words, duplication of facilities and competition in the same community is to be avoided. There is not time to discuss in detail the principles which the Authority has adopted to govern its operations in this new relation as a competitor of a public business. These principles have been set out by the Authority in its Power Policy, and have been discussed in some detail in various public statements."—January 6, 1934.

33. "In many states it had become perfectly obvious that the regulators were not regulating the utilities, but that in effect the utilities were regulating the regulators. In other states the regulatory commissions were doing an honest and sincere job, but were rendered ineffective by the interminable procedure of regulation. And so to supplement and reinforce regulation, Congress passed the Tennessee Valley Authority Act."—April 24, 1934.

34. "SO MUCH FOR THE FIRST OBJECTIVES OF THE TENNESSEE VALLEY AUTHORITY—THE REGULATORY, PUBLIC CONTROL PURPOSES OF THIS NATIONAL POWER POLICY. WE COME THEN TO THE SECOND OBJECTIVE, OF AT LEAST EQUAL SIGNIFICANCE.

"The power program of Congress and the President has

as its major objective a constantly wider use of electricity. The fundamental problem of the Tennessee Valley Authority, of the electric industry, of the Federal Government, is to devise economic ways and means to make electricity generally available, of promoting the widest possible use of power in the home, on the farm and in the factory."—April 25, 1934.

35. "This, then, is the national power program which the Tennessee Valley Authority is carrying forward."—April 25, 1934.

36. "By 1933 the management of some of our major electric utilities had become a national scandal. It was inevitable that President Roosevelt and the Congress should squarely face this situation. It was inevitable that they should see that regulation alone was inadequate to fully protect either the consumer or the investor. It was plain to all that regulation needed strengthening and needed supplementing.

"Neither the industry nor the investors took effective action to meet this situation. The President and Congress, in setting up the Tennessee Valley Authority, were merely responding to an overwhelming public sentiment. The public, investors and consumers alike, demanded an experiment on a broad scale, of public electric operation. This development was designed to serve as one means of seeking to prevent a continuation of financial and operating practices which had brought discredit on the entire industry, sound and unsound managements alike."—May 17, 1934.

**As to the Intention to Engage Directly in the Operation of Utility Business.**

37. "What the Tennessee Valley Authority is required to do in its power program is to set up an area for power operations. This part of its undertaking I can best describe by taking a specific case. The Authority has entered into a contract with the City of Tupelo, in Northeastern Mississippi, the first agreement for the sale of power from Muscle Shoals to any municipality. I would like to outline to you some of the terms of that contract, which are standard with all communities served by the Authority."—April 25, 1934.

37-a. "The Authority is under duty to acquire a market for its power. * * * It is authorized to compete with existing utilities, and for this purpose, expressly empowered to erect duplicate facilities."—June 1, 1934.

37-b. "The essence of this agreement is a recognition by the power companies who were parties to the arrangement that the TVA is under a duty to operate a public power business, directly and through public agencies."—January 5, 1934.

**As to Essential Features of the Program Having No Relation to Navigation.**

38. "But while the provisions for producing power and fertilizer are prominent in the public attention, they are but incident in the whole plan for the Tennessee Valley Authority. That plan aims at nothing less than the displacement of haphazard and chance development by a far-reaching program of social and economic planning."—August 16, 1933.

39. "It is a deliberate turning toward the future, a com-

mitment to an ideal. Its success can depopulate cities, destroy a thousand entrenched privileges, invalidate a whole tradition of single-hearted self-interest.

"That sums up what this undertaking means to the President. This great project might have been located in any one of several parts of our country. It is not a pork barrel appropriation for the Tennessee region. It is part of the major program to try to find a way out of industrial chaos into a designed social and industrial order. If we do not see it that way, we do not see the heart of the Tennessee Valley program."—August 31, 1933.

40. "Again I am going to quote, this time from the President when he was talking to a community up in New York State. Social and economic planning isn't a Tennessee Valley program, or an Eastern problem—it is a world problem today and he sees it as such. The reason the Tennessee Valley Authority is in Tennessee is that it has to be somewhere and this is a good place. The same problem here is a National problem. The President said:

> " 'We are engaged today, as you know—not just the government in Washington, but groups of citizens everywhere—in reviewing all kinds of human relationships * * *' "—August 31, 1933.

41. "Let us take another need for social and economic planning in another field—that of county government. The county organization of this region was determined during the early days, a century or more ago, when there were few roads, and when men traveled by horseback up the creeks. The court houses would be half a day's trip from the county borders. With modern roads and automobiles a man travels as far in half an hour as one did then in half a day. A study of some of these county court houses disclosed that in some of them all the work of the county offi-

cials can be done in one-half day a week. A consolidation of counties into perhaps one-sixth as many might more than cut in two the cost of local government, and greatly improve its quality."—November 21, 1933.

42. **"What we need is not a new deal, but a New Game. * * ***

"How can we do that in the Tennessee Valley? The aim can be held in general, but its execution gets down to a series of particular cases—to hydraulic studies for power plants, to chemical processes of manufacture, to educational methods, to principles of sociology and of economics, to researches in government, to studies in industrial organization, production and distribution."—November 21, 1933.

43. "State experiments, associated with the problems of agricultural home life and, to some extent, industry, have been in progress for many years. The Tennessee Valley Authority enterprise, however, is a new departure in our economic and political procedure. It is national in its conception, and is the first of its kind to be undertaken by any nation for the study of regional problems of nation-wide application.

"The 'yardstick' is to be applied to problems of the country's resources in order to determine more definitely the public's obligation to them and their place in a national policy of economic and social planning."—February 6, 1934.

44. "The Tennessee Valley Authority is the expression of a desire on the part of the President and Congress to work out in a limited area principles of social and economic planning which can later have application on a wider scale. * * *

"Among the fundamental purposes to be achieved are: that haphazard and unregulated growth shall be displaced by intelligent and orderly planning; that great wastes in the present way of doing things shall be eliminated, among the greatest wastes at present being the wastes of frustrated hopes and ambitions of people who find no fair chance at life."—February 7, 1934.

45. "In this region, as in many other parts of the United States, there is very great overproduction of lawyers, storekeepers, teachers, real estate men and certain other standard callings, whereas much other necessary work is left entirely undone. One of the problems of social and economic planning is the better balancing of occupations and the helping of young people to see fields in which they might better work. For instance, the prevention of soil erosion would provide careers for a number of young engineers."—February 7, 1934.

46. "In Section 2 of the Act the following statement occurs, 'All members of the board shall be persons who profess a belief in the feasibility and wisdom of this Act.' A board believing in the feasibility and wisdom of the Act could not be expected to accomplish results unless supported by a staff with similar beliefs. It thereby becomes essential that all people holding major positions with the Authority also believe in the feasibility and wisdom of the Act. The Authority, therefore, seeks men and women who are not only technically qualified by training and experience for the job at hand, but who are also social minded."—March 14, 1934.

47. "Mr. Lilienthal laid emphasis on the point that the Authority's program is not a local project.

"Its implications extend to the outermost reaches of this country."—June 22, 1934.

**As to the Intention of TVA to Take the Market for an Outlet for Its Available Power.**

48. "I suppose it is obvious that all computations concerning costs are based on the expectation that the Authority will sell the power which it has available. Muscle Shoals was turned over to us as a going plant, but not as a going concern with customers. Obviously, if we sell only one kilowatt hour, our cost will be hundreds of thousands of dollars a kilowatt hour, rather than a few mills. If the power is not utilized in volume, no one will receive the great potential benefits of the wealth of the Tennessee River. It is axiomatic in the electric business that an increase in use decreases the cost per unit of output. Accordingly, we look forward to a maximum use of our facilities, because it is in that way that the Authority and those agencies which buy its power at wholesale can steadily bring down rates to the householder, the farmer and the business man, and bring to this area the economic and social benefits of the President's plan."—October 17, 1933.

49. "The Authority must carry out the national policy entrusted to it. It must acquire a market for its power."—October 17, 1933.

50. "The Authority must carry out the national policy entrusted to it. It must acquire a market for its power. It must work toward a wider use of electricity. None of these objectives will result in the predicted calamities to the industry and its bona fide investors. The Authority early adopted a policy of buying, at fair prices, the property of private utilities in the area selected for its 'yard-

stick' operations rather than to duplicate facilities and engage in destructive competition."—April 25, 1934.

51. "The Authority is under duty to acquire a market for its power. It is authorized to compete with existing utilities, and for this purpose is expressly empowered to erect duplicate facilities."—May 17, 1934.

**As to Covenants and Conditions by Which TVA Undertakes to Control Re-sale Rates and Service.**

52. "Washington, Nov. 15.—Terms and conditions for the sale of electricity by municipalities purchasing power from the Tennessee Valley Authority were announced here today by David E. Lilienthal, director in charge of power development. * * *

"The 20-year agreement between the TVA and Tupelo is expected to set a standard for contracts with other municipalities within transmission distance of Muscle Shoals. Besides rate schedules, the Tupelo contract carries with it certain rules and regulations applicable to all TVA customers. Among other things, Tupelo agrees:

> "'(a) To administer its electric system as a separate department and not to mingle funds or accounts with those of any other of its operations.'
>
> "'(b) To keep its electric system accounts according to a system of accounts to be prescribed by Authority after conference with Contractor, which system of accounts will so far as possible be uniform with other systems prescribed and applied in other municipalities purchasing electrical energy from Authority. Authority agrees at its own expense to render advisory accounting service in the setting up and administering of such accounts.'
>
> "'(c) To furnish promptly to Authority such operating and financial statements relating to electric system operations as may be requested by Authority.'

"'(d) To allow the duly authorized agents of Authority to have free access to all books and records relating to electric system operations.'

"'(e) * * * Contractor shall observe the principle that the sale of energy for industrial use shall be a secondary purpose, to be utilized principally to secure a sufficient high load factor and revenue to permit domestic and rural use at the lowest possible rates and in such manner as to encourage increased domestic and rural use of electricity,'" etc.—November 15, 1933.

**As to the Program of TVA Being the Answer to the Executive Message.**

53. "The Tennessee Valley Authority, as created by Act of Congress of May 18, 1933, is just what the President proposed."—December, 1933.

54. "The Tennessee Valley project translates into concrete form a vision of President Roosevelt. The project was born in his mind, and it is being carried forward under his guidance. It is part of a program for national development. It is not a local project. Its implications extend to the outermost reaches of this country. It is this objective that justifies the huge expenditure of Federal funds in one section of the country." * * *

Mr. Lilienthal laid emphasis on the point that the Authority's program is not a local project.

"Its implications extend to the outermost reaches of this country."—June 22, 1934.

**As to the Effective Duress Exerted Under the TVA Program Against the Power Companies to Force Sale of Properties or Systems Desired in Furthering the TVA Program.**

54. "Had the power companies which are parties to this contract been unwilling to sell these facilities at a fair

price, or had they insisted on payment for intangibles or water, the Authority would have been under a definite mandate to construct duplicating facilities rather than submit to being 'held up'."—January 5, 1934.

55. "The City of Knoxville, being unable to purchase the existing plant, now has no alternative but to proceed immediately with the construction of its own plant with funds loaned for that purpose by the Public Works Administration."—March 3, 1934.

56. "Heading the list is Knoxville, Tennessee, which already has been granted a loan by the Public Works Administration to construct distributing lines. The city's offer to purchase the existing facilities having been turned down, officials are now negotiating with an engineering firm to draw plans for a new system."—March 21, 1934.

57. " 'There are only two alternatives open to the people of North Alabama,' Mr. Lilienthal said. 'The first is to build duplicate and competing plants with the delay involved in getting construction under way and with the expense of acquiring enough customers to insure financial success.

" 'We believe that the communities would get 100 per cent of the business because of the lower rates and because of the loyalty of the people of these communities.

" 'The results of this alternative clearly, would be to render valueless the lines, poles, transformers, etc., which are now owned by the Alabama Power Company. This property is useful and has a value at the present time to the people of the community.' "—July 6, 1934.

58. "Dr. Morgan. In purchasing from the Commonwealth & Southern Co., we made an agreement with them that we would not invade their territory for the present

until the Norris Dam is completed. After that, we hope we can make some arrangement for a division of territory.

"Mr. Thurston. Will you build dams first, or will you make the division before you build the dams?

"Dr. Morgan. We are building the dams."—House Hearing, May 21, 1934, page 155.

59. "In our opinion, if we can carry through the program we have, we may cause a temporary disadvantage to the immediate power interests around there—to the companies immediately surrounding us. We are trying to make arrangements with them to purchase their utilities. This project is an effort to set up a governmental development of power, and, if that is adopted, it seems to me a reasonable set-up that it should not be hamstrung and so limited that it is bound to fail. * * *

"We are trying to take them over. We were in negotiation with the Commonwealth & Southern, and we have come to an agreement; as the other plants come into operation, we ought to take over more." ib. page 156.

"Mr. Bacon. In purchasing these transmission lines, you have come to an agreement with the companies, but it is really an agreement under duress, is it not, because if they did not sell to you, you would duplicate their lines?

"Dr. Morgan. Yes." ib. page 163.

**As to the Necessity for Manifold Increase in Demand to Absorb Excess Capacity Under Construction.**

60. "Within the area of the Tennessee Valley, for example, privately owned electric companies have generating and transmission facilities which can care for between 30% and 40% more demands for electricity than is now required, even allowing for reasonable spare capacity. A fair estimate is that 25% of the investment in power houses and

transmission lines is idle, and is piling up fixed charges, because the customers of these companies are still tied to a low average use of electricity. The Tennessee Valley Authority has a hydro-electric plant at Muscle Shoals with a rated installed capacity of 250,000 H.P. But that is only the beginning of the story. The Authority is constructing a dam and power house at Cove Creek, and another dam and power house above Muscle Shoals at what is known as the 'Joe Wheeler' dam, which together will increase the capacity of Wilson Dam to at least 600,000 H.P."—November 11, 1933.

61. "If we admit that the use of electricity cannot be increased many fold; if that is our mental attitude, then we must be logical and immediately stop construction of the Cove Creek dam and of the Joe Wheeler dam."—November 11, 1933.

## EXHIBIT NO. 5.

### Contract.

This contract, made and entered into this 4th day of January, 1934, between Tennessee Valley Authority, a corporation organized and existing under and by virtue of the Tennessee Valley Authority Act of 1933, hereinafter called Authority, and Commonwealth & Southern Corporation, a corporation organized and existing under the laws of the State of Delaware, hereinafter called Commonwealth Company, Alabama Power Company, a corporation organized and existing under the laws of the State of Alabama, hereinafter called Alabama Company, Tennessee Electric Power Company, a corporation organized and existing under the laws of the State of Maryland, hereinafter called Tennessee Company, Georgia Power Company, a corporation organized and existing under the laws of the State of Georgia, hereinafter called Georgia Company, and Mississippi Power Company, a corporation organized and existing under the laws of the State of Maine, hereinafter called Mississippi Company, the Alabama Company, Tennessee Company, Georgia Company and Mississippi Company to be hereinafter collectively designated as Power Companies,

Witnesseth

Whereas, Power Companies, all of which are subsidiaries of Commonwealth Company, and Authority, for the mutual benefit of the respective power systems of Power Companies and Authority, desire to enter into an agreement for the interchange of electric power and for certain switching and other services in connection with such interchange as hereinafter specifically set forth; and

Whereas, the electrical system of all Power Companies

are interconnected and the interchange arrangement hereinafter agreed upon will benefit each of said Power Companies whether or not any interchange is made directly with each of said companies; and

Whereas, Alabama Company, Tennessee Company and Mississippi Company desire to sell, and Authority desires to purchase, certain land, buildings and physical properties devoted to the generation, transmission and distribution of electricity, together with certain franchises, contracts and going business as herein specifically set forth; and

Whereas, the parties desire to enter into certain other and further covenants, as herein specifically enumerated:

Now, Therefore, in consideration of the covenants herein mutually entered into, the parties hereto covenant and agree as follows:

1. Mississippi Company covenants and agrees to convey to Authority, its nominee or nominees, promptly upon the execution of this contract, all of its transmission and distribution lines, substations, generating plants and other property (except one certain dam site in Tishomingo County, State of Mississippi, on Tennessee River) used in connection with the generation, transmission, distribution or sale of electrical energy by it in the Counties of Pontotoc, Lee, Itawamba, Union, Benton, Tippah, Prentiss, Tishomingo and Alcorn in the State of Mississippi, said property being more particularly described in Exhibit A attached hereto and hereby made a part hereof. Authority agrees to pay for such properties on the date of delivery thereof the sum of eight hundred and fifty thousand dollars ($850,000).

2. Alabama Company covenants and agrees to convey to Authority, its nominee or nominees, immediately upon re-

quest, and from time to time as requested, any or all of its low tension (44 KV or lower) transmission lines, sub-stations (including the high tension station at Decatur and the Sheffield steam plant station) and all rural lines and rural distribution systems in the Counties of Lauderdale, Colbert, Lawrence, Limestone, Morgan (excluding the Hulaco area), north half of Franklin (including the town of Red Bay), and the territory in the northern part of Cullman served by a certain line of Alabama Company extending south from Decatur, all in the State of Alabama, said property being more particularly described in Exhibit B attached hereto and hereby made a part hereof. Authority covenants and agrees that when it has taken all of such properties it will pay therefor an aggregate sum of one million dollars ($1,000,000). Alabama Company further agrees promptly upon the execution of this contract to convey to Authority, its nominee or nominees, all of the real property which it owns within and adjacent to the area known as the J. . Wheeler dam site in the Counties of Lawrence and Lauderdale, in the State of Alabama, said property being more particularly described in Exhibit C, attached hereto and hereby made a part hereof. Authority covenants and agrees to pay an aggregate sum of one hundred and fifty thousand dollars ($150,000) for such properties. Authority agrees to pay for such properties on the respective dates of delivery thereof at 60.17448% of the respective prices shown for such properties in said Exhibit B, and at 51.81257% of the respective prices shown for such properties in Exhibit C.

3. Tennessee Company covenants and agrees to convey to Authority, its nominee or nominees, immediately upon request, and from time to time as requested, any or all of its transmission and distribution lines, sub-stations, distri-

bution systems and other properties used in connection with the transmission, distribution and sale of electrical energy by it in the Counties of Anderson, Campbell, Morgan (except the lines extending into Morgan County from Harriman), Scott and the west portion of Claiborne, and all of the 66 KV transmission line from Cove Creek to Knoxville in Knox County, all in the State of Tennessee, being more particularly described in Exhibit D, attached hereto and hereby made a part hereof. Authority agrees to pay for such properties on the respective dates of delivery thereof at 65.91702% of the respective prices shown for such properties in said Exhibit D. Authority covenants and agrees that if and when it takes all of such properties it will pay therefor an aggregate sum of nine hundred thousand ($900,000) dollars.

4. Power Companies severally covenant and agree that the properties which by this contract they agree to convey to Authority, its nominee or nominees, shall be conveyed free of liens or other encumbrances, except such liens or encumbrances as may be specifically recited in the respective exhibits, titles being subject to approval of counsel for Authority; and Power Companies severally covenant and agree to secure any necessary waiver of liens or encumbrances created by any security issue authorized and/or outstanding against the properties which they agreed to convey. All conveyances by Power Companies shall be by general warranty deed, and title shall be subject only to the liens or encumbrances recited in said exhibits; Provided, however, that Power Companies shall not be required to warrant easements or rights-of-way assigned or transferred hereunder, other than that they validly hold and exercise such easements or rights-of-way, and are free to transfer same to Authority. Any conveyance of prop-

erty shall include not only the physical property, easements and rights-of-way, but shall also include all machinery, equipment, tools and working supplies set forth in the respective exhibits, and all franchises, contracts and going business relating to the use of any of said properties, without extra charge. Power Companies severally covenant and agree to transfer or secure the transfer of said franchises, contracts and going business, and to transfer said properties with all present customers attached, so far as they are able. Power Companies severally covenant and agree that pending the transfer of any properties to Authority as herein provided, they will maintain such properties in good condition, and expend for such maintenance the amounts normally allowed therefor in their respective budgets.

5. Alabama Company covenants and agrees to convey its urban distribution systems in the above named counties in Alabama, said distribution systems being listed in Exhibit B, to the respective municipalities in or adjacent to which such systems are located, together with all franchises, contract rights, and going business thereto appertaining, when it has agreed with any such municipality on the price to be paid for the same. Alabama Company agrees to make every reasonable effort to come to an early agreement with said municipalities for such sales. In the event that any such municipality is unable to arrive at a satisfactory price after three months of bona fide negotiation with Alabama Company, or if for some other reason the sale of any such system cannot be consummated, Authority shall have the right to serve such municipality or municipalities irrespective of whether such municipalities have purchased the distribution systems from Alabama Company. Authority covenants and agrees to use its best endeavors to assist in

bringing about the purchase of such distribution systems by the respective municipalities at fair prices.

If Authority elects to purchase said transmission systems in said areas prior to the purchase by municipalities of said distribution systems, then Authority agrees to exchange with Alabama Company sufficient electric energy to supply said distribution systems.

6. Tennessee Company covenants and agrees as to any municipal distribution systems in the above named Counties in Tennessee which Authority does not elect to purchase, Tennessee Company will convey such distribution systems to the municipalities in or adjacent to which such systems are located, together with all franchises, contract rights and going business thereto appertaining, when it has agreed with any such municipality on the price to be paid for same. Tennessee Company agrees to make every reasonable effort to come to an agreement with said municipalities for such sales. In the event any such municipality is unable to arrive at a satisfactory price after three months of bona fide negotiation with Tennessee Company, or if for some other reason the sale of any such system cannot be consummated. Authority shall have the right to serve such municipality or municipalities irrespective of whether such municipalities have purchased the distribution systems from Tennessee Company. Authority covenants and agrees as to any of said distribution systems which it does not purchase to use its best endeavors to assist in bringing about the purchase of such distribution systems by the respective municipalities at fair prices.

If Authority elects to purchase said transmission systems in said areas prior to the purchase by municipalities of said distribution systems, then Authority agrees to exchange with Tennessee Company sufficient electrical energy to supply said distribution systems.

7. Power Companies covenant and agree that during the period of this contract none of said companies will sell electric energy to any municipality, corporation, partnership, association or individual in any portion of the above-described counties or parts thereof in Alabama, Tennessee and Mississippi, in which portions the properties of Power Companies listed in the respective schedules attached hereto have been transferred out of Power Companies in accordance with this contract or in which Power Companies at the time of entering into this contract do not own such properties. During said period Authority will not sell electric energy outside of said counties to the customers of non-utilities supplied by Power Companies; Provided, however, that nothing herein contained shall be construed to prevent Authority from selling electric energy outside of said counties to any municipality or municipalities which, or the distribution system serving which, is not on the date of the execution of this agreement being served by Power Companies; and Provided, further, that distribution systems having interchange contracts with Power Companies, or supplied by companies or systems having interchange contracts with Power Companies, shall not within the meaning of this contract be considered as being supplied with electricity by Power Companies, except that Authority shall not have the right to interchange power with any utility operating under an interchange contract with Power Companies; and Provided further, that nothing herein contained shall be construed to prevent Authority from selling electric energy to rural consumers or organizations thereof, in the counties of Rhea, Roane, Meigs and the western part of McMinn on the so-called plateau, in the State of Tennessee, not now being served by Tennessee Company, and to rural consumers or organizations thereof in Monroe County in the State of Mississippi, not now be-

ing served by Mississippi Company; and Provided, further, that in addition to the above described exceptions nothing in this contract shall be construed to prevent Authority from selling, outside of the five counties or parts thereof above named and the counties named in Sections 1, 2 and 3 of this contract, electric energy up to a total demand of 2500 KW to customers not at the time served by Power Companies.

8. As a part of the interchange arrangements provided for by this contract, Authority agrees to deliver to Power Companies on demand, at points hereinafter described, all of its surplus hydro-electric power, and Authority agrees to supply not less than 20,000 KW, if Power Companies desire that amount, plus the totalized net demand of Authority on Power Companies at the various exchange points hereinafter described, plus fifteen per cent of such totalized net demand for line losses; and Power Companies agree to receive and take such power when, as and to the extent required by them. The term "totalized net demand" as used herein shall be construed to mean the aggregate one hour integrated demand of Authority at all exchange points, less the aggregate one hour integrated demand of Power Companies at all exchange points. The term "surplus hydro-electric power" as used herein shall be construed to mean the excess of available water capacity over Authority's own requirements as such may exist from time to time. The decision as to what constitutes excess capacity at any given time shall be in the discretion of the acting Chief Operating Officer of Authority at Wilson Dam at such time; Provided, however, that nothing herein contained shall be construed as a limitation on the obligation of Authority to supply 20,000 KW to Power Companies. Authority agrees to supply Power Companies on request

all data bearing upon water capacity and Authority's requirements.

9. Authority covenants and agrees to supply power to Power Companies at the following points of exchange and at such other points as the parties may from time to time agree:

(a) At Wilson Dam on the 154 k. v. line connecting Gorgas and Nashville;

(b) At Wilson Dam on the 110 k. v. line extending from Wilson Dam to Huntsville at the point where the line crosses the southern boundary of U. S. Nitrate Plant No. 2;

(c) At the point where the 44 k. v. line extending from West Point to Supelo intersects the southern boundary line of Lee County, Mississippi; Provided, however, that Authority shall not be obligated to render service at this point unless and until the line from Supelo to Wilson Dam is constructed by Authority.

(d) At such other points as may be necessary to comply with the obligations of Authority under this contract to supply distribution systems operated by Power Companies.

10. Power Companies covenant and agree to supply power to Authority at the following points of exchange:

(a) At Wilson Dam on the 154 k. v. line connecting Gorgas and Nashville;

(b) At Wilson Dam on the 110 k. v. line extending from Wilson Dam to Huntsville at the point where the line crosses the southern boundary of U. S. Nitrate Plant No. 2;

(c) At the point where the 44 k. v. line extending from West Point to Tupelo intersects the southern boundary line of Lee County, Mississippi;

(d) At the point where the high-tension substation at

Decatur, Alabama, joins the 110 k. v. line of the Alabama Company extending from Sheffield to Huntsville;

(e) At or near the point on the 44 k. v. line between Huntsville and Decatur where the line crosses the boundary of Limestone and Madison Counties, Alabama;

(f) At a point on the 120 k. v. line of the Tennessee Company at or near Cove Creek, Tennessee;

(g) At a point on the 154 k. v. line connecting Wilson Dam and Nashville at or near Mount Pleasant, Tennessee;

(h) At such other points on the lines of Power Companies as Authority may from time to time designate for service to any customer which Authority may serve under Section 7 of this contract; Provided, however, that Authority shall pay the whole cost of such additional connections; and Provided, further, that Power Companies shall be under no obligation to render service to an amount in excess of the surplus transmission capacity of the respective lines except that Authority may, solely at its own expense, advance funds to the respective Power Companies for increasing the transmission capacity of said lines and that upon being advanced the funds Power Companies shall be obligated to make such increase in transmission capacity; and Provided, further, that Authority shall not have the right under this sub-paragraph to designate any exchange points outside of the Tennessee Valley Basin. Power Companies shall retain title to all improvements thus financed on said lines; Provided, however, that should Authority purchase said lines, the net increase in value because of such improvements shall be deducted from the purchase price.

11. Power Companies covenant and agree that after the expiration of this agreement the interchange arrangement

then in effect will be maintained by Power Companies for an additional period (not exceeding eighteen months) sufficient to permit Authority to construct its own transmission facilities for serving all of the territory which it is then serving in whole or in part with power obtained at such interchange points.

12. The cost of installing the necessary apparatus for the exchange of power at Wilson Dam shall be borne in equal part by Authority and Alabama Company. The cost of installation of additional interchange facilities at the remaining points shall be borne by Authority. The cost of operation and maintenance of the interchange facilities at the interchange points described in Section 9 and in subparagraphs (a) to (g), inclusive, of Section 10 hereof, shall be borne equally by Authority and the respective Power Company directly involved, and such operation and maintenance shall be under the general control and direction of Authority and said such Power Company, and shall be effected through joint employees whose compensation shall be equally borne. No such employee shall be continued in service if objected to by either party. The cost and control of the operation and maintenance of the additional points of exchange, provided for by Section 10 (h), shall be governed in the same manner except that Authority shall reimburse Power Company for its share of such cost of operation and maintenance.

13. Power Companies agree to have available at all times for exchange, at each point of exchange, energy and capacity to supply the entire demands of the customers served by Authority from such points of exchange, subject to the limitations as to transmission capacity set forth in Section 10 (h) hereof; Provided, that the maximum

amount which Authority shall be entitled to demand at all points of exchange shall be 70,000 k. v.

14. In the computation of the obligations for energy interchanged under the terms of this contract, and in the settlements therefor, Power Companies shall act and be treated jointly, through an agent of their own selection, hereinafter called Agent; and Power Companies covenant and agree to select such an agent promptly upon the execution of this contract, and promptly to notify Authority of their selection in writing. Power Companies may jointly designate a new agent from time to time, upon giving Authority three calendar months notice in writing; and such new agent shall succeed to all the rights, duties and obligations of its predecessor. Power Companies hereby waive all recourse against Authority, except through such agent. Power Companies and Commonwealth Company shall, however, be jointly and severally liable for all obligations hereunder pertaining to said interchange arrangements, the establishment and maintenance of exchange points, the amount of energy or capacity to be made available at such points, and the settlement of obligations created thereby, including the payment of quarterly settlements provided for in Section 15, and the monthly payment provided for in Section 16 hereof.

15. Computation of the obligations for energy interchanged under the terms of this contract shall be made on the following basis: Statements shall be rendered to each other by Agent and Authority quarterly. The first statement shall be rendered within ten days after March 31, 1934, for the period beginning with the date of execution of this contract and extending to and including March 31, 1934. Similar statements shall be rendered within ten days after the close of the quarterly calendar periods dat-

ing from March 31st thereafter. The statements shall show the amount of energy exchanged at each exchange point plus 15 percent for line losses on the transmission thereof from the point of generation; Provided, however, that line losses shall not be considered in the determination of the amount due Authority for the delivery of energy to Power Companies at the point of generation. Statements shall be computed as per the following example, viz:

| | | |
|---|---|---|
| (1) Kilowatt Hours Received by Power Companies at the point of generation | | 30,000,000 kwh |
| (2) Kilowatt Hours Received by Power Companies from Authority at exchange points other than the point of generation | 8,000,000 kwh | |
| Add 15% for line losses ..... | 1,200,000 kwh | 9,200,000 kwh |
| Total Received by Power Companies | | 39,200,000 kwh |

(Top line of computation this page repeated in reprint.)

| | | |
|---|---|---|
| Total Received by Power Companies | | 39,200,000 kwh |
| (3) Kilowatt Hours Received by Authority from Power Companies at exchange points ..... | 20,000,000 kwh | |
| Add 15% for line losses ..... | 3,000,000 kwh | 23,000,000 kwh |
| Difference (2) and (3)..... | | 16,200,000 kwh |

and the excess of energy delivered by Power Companies (considered as a unit) to Authority and vice versa, shall be paid for by Agent or Authority, as the case may be, within twenty days after March 31, 1934, or of the close of

subsequent quarterly periods, as the case may be. The party receiving such excess of energy over the energy delivered in exchange during such period shall pay therefor at the following rates:

First 300,000 Kilowatt Hours per period at 3.6 mills per k. w. h.

Next 600,000 Kilowatt Hours per period at 2.7 mills per k. w. h.

Next 2,100,000 Kilowatt Hours per period at 2.25 mills per k. w. h.

Next 18,600,000 Kilowatt Hours per period at 1.8 mills per k. w. h.

Next 21,600,000 Kilowatt Hours per period at 1.35 mills per k. w. h.

Excess Kilowatt Hours per period at 1.08 mills per k. w. h.

16. In addition to the energy payments hereinbefore provided, Agent agrees to pay monthly to Authority $16,200 (1) for the reservation by Authority for the use of Power Companies of the 20,000 k. w. of capacity as hereinbefore provided, (2) for the use of the 154 k. v. line of Authority on the reservation at Wilson Dam, (3) for the use of other property of Authority required for the interchange of power, (4) and to cover the expense of the switching and voltage regulation by Authority necessary to synchronize its operations with the operations of Power Companies.

17. Tennessee Company agrees to file with the Railroad and Public Utilities Commission of Tennessee, simultaneously with the execution of this contract, schedules of domestic service rates, as follows:

## Metered Residential Service.

Alternating current, Single Phase Applicable to any residential service installation located on The Tennessee Electric Power Company's existing alternating current single phase distribution lines within the State of Tennessee.

Energy Charge—Net

New "Immediate" Rate

| | | | | |
|---|---|---|---|---|
| 6.5c | per | KWH | first 25 | KWH |
| 5c | " | " | next 35 | " |
| 3c | " | " | next 140 | " |
| 1.5c | " | " | over 200 | " |

Minimum bill—$1.00 per month.

New "Promotional" Rate

$1.00 per month including 15 KWH per month

| | | | | |
|---|---|---|---|---|
| 4.5c | per | KWH—next | 50 | KWH |
| 2c | " | " next | 135 | " |
| 1¼c | " | " next | 500 | " |
| 1c | " | " over | 700 | " |

## Procedure in Applying New "Immediate" & "Promotional" Rates.

A base bill will be established for each customer as follows:

A—For Existing Customers

The base bill will be the K. W. H. use for the same month of the year preceding the effective date of the new rates, computed under the new "Immediate" rate.

B—For New Customers

The base bills for new customers and for those taken on during 12 months preceding the effective date of the new

rates will be their first 12 months use computed under the new "Immediate" rate.

Whenever the customer's bill under the new "Immediate" rate is equal to or less than his base bill, the new "Immediate" rate will apply.

Whenever the customer's bill under the new "Promotional" rate is greater than his base bill, the new "Promotional" rate will apply.

Whenever the customer's bill under the new "Immediate" rate will be greater than his base bill but under the new "Promotional" rate will be less than his base bill, the customer will be billed the base bill. No bill under the new "Promotional" rate will be for less than the base bill and no bill under the new "Immediate" rate will be rendered for an amount greater than the base bill.

At the close of the first 12 months of the application of the new rates, all base bills will be reduced 5%. The resultant base bills will be reduced another 5% at the end of 24 months. At the end of 36 months the new "Immediate" rate will be eliminated and the new "Promotional" rate will apply to every residence customer.

Minimum Charge

$1.00 per month.

Prompt Payment

The above are net rates—if bills are not paid within 10 days from the date thereof the gross rate will apply which will be 5% in excess of the above net rates.

Term of Agreement

From date of connections until disconnected on 30 days written notice of one party to the other or on non-payment of bills for service.

18. The parties hereto shall not be liable to each other on account of any interruption of the exchange of power as provided in this contract or any damages resulting therefrom due to strikes, fires, storms, break-downs or other cause beyond their control.

19. Power Companies and Commonwealth Company covenant and agree to co-operate in the sale of electrical appliances throughout the entire territory served by Power Companies, and to use their utmost endeavors to co-operate with Authority and with Electric Home and Farm Authority, Inc., to promote the sale of electric appliances throughout the Tennessee Valley States served by them.

20. Compliance by Authority with any direction or requirement of the Tennessee Valley Authority Act of 1933 shall not be construed in any way as a violation of the terms of this agreement, nor shall such compliance be construed or urged as a failure or partial failure of consideration hereunder.

21. This contract shall remain in force and effect from the date of the execution hereof until midnight December 31, 1938, or until three months after the completion of Norris Dam power plant, whichever is earlier. Upon completion of said plant, if before October 1, 1938, Authority shall notify Commonwealth Company of such completion and this contract shall terminate three calendar months after the receipt of such notification.

22. Power Companies covenant and agree promptly upon the request of Authority to apply to the respective state public service commissions and other public bodies whose consent or approval is required by law to make effective the several terms of this contract for such consent or approval, and to prosecute such applications with diligence.

23. This contract is executed in sextuplicate, and shall enure to and be binding upon the successors and assigns of the respective parties hereto.

In Witness Whereof the parties hereto have caused this instrument to be signed and sealed by their duly authorized officers, and attested under the hand and seal of their respective secretaries.

Commonwealth and Southern Corporation
By Wendell L. Willkie
President

Attest:
E. E. Nelson
Secretary

Alabama Power Company
By Thos. W. Martin
President

Attest:
Walter M. Hood
Secretary

Tennessee Electric Power Company
By Jo C. Guild, Jr.
President

Attest:
B. F. Manning
Secretary

Mississippi Power Company
By B. E. Eaton
President

Attest:
L. H. Crowell
Secretary

Georgia Power Company
By P. S. Arkwright
President

Attest:
W. H. Wright
Secretary

Tennessee Valley Authority
By Arthur E. Morgan
Chairman

Attest:
C. A. Bock
Secretary

---

January 1934 **Exhibit "A"**

(This exhibit, relating to Mississippi Power Company, is omitted.)

January 1934 **Exhibit "B"**

(Description of primary substations, 44 KV transmission lines, and 44 KV substations, and rural distribution systems (sheets one to five, inclusive), omitted; also map attached, outlining the counties of Lauderdale, Limestone, Colbert, Lawrence, Morgan, and part of Franklin).

January 1934 **Exhibit "B"**

Sheet 6 of 7 sheets

Alabama Power Company

This property **not** to be transferred to Tennessee Valley Authority. It is listed herewith to show the urban distribution which is retained by the Power Company.

**Distribution Systems**

**Urban**

(Including offices and warehouses except as noted)*

| District | Present Replacement Value 12-1-33 | Description |
|---|---|---|
| Decatur* | $ 350,000 | Decatur, Albany, Austinville |
| Hartselle | 81,000 | Hartselle, Falkville |
| Russellville | 148,784 | |
| Courtland | 60,500 | Courtland and Town Creek |
| Leighton | 19,500 | Leighton |
| Cherokee | 19,500 | Cherokee |
| Sheffield* | 760,000 | Sheffield, Tuscumbia, Florence, Seven Points and Industrials. |
| Belle Mina | 6,100 | Belle Mina |
| Rogersville | 0 | District |
| Athens | 31,000 | District |
| Red Bay District. | 40,000 | Town and Lines |
| Total | $1,516,284 | |

January 1934

**Exhibit "C"**

Sheet 1 of 1 sheet

Alabama Power Company

Listing of Lands at Joe Wheeler Dam Site to Be Conveyed to the Tennessee Valley Authority

| Acreage Approximately | Price | Description |
|---|---|---|
| 1,643 acres..... | $289,505 | Lauderdale County — T35 — R8W. Certain lands in Sect. 4.<br>Lawrence County — T35 — R8W. Certain lands in Sects. 14, 15, 16, 17, 20, 21 and 23.<br>All in State of Alabama comprising Site #3 or Joe Wheeler Dam Site on Tennessee River. |

January 1934

**Exhibit "D"**

(This exhibit, relating to Tennessee Electric Power Company, is omitted.)

## EXHIBIT 5-a.

### Amendatory Contract.

This Amendatory Contract, made and entered into this 13th day of February, 1934, between Tennessee Valley Authority, a corporation organized and existing under and by virtue of the Tennessee Valley Authority Act of 1933, hereinafter called Authority, and Commonwealth & Southern Corporation, a corporation organized and existing under the laws of the State of Delaware, hereinafter called Commonwealth Company; Alabama Power Company, a corporation organized and existing under the laws of the State of Alabama, hereinafter called Alabama Company; Tennessee Electric Power Company, a corporation organized and existing under the laws of the State of Maryland, hereinafter called Tennessee Company; Georgia Power Company, a corporation organized and existing under the laws of the State of Georgia, hereinafter called Georgia Company, and Mississippi Power Company, a corporation organized and existing under the laws of the State of Maine, hereinafter called Mississippi Company, the Alabama Company, Tennessee Company, Georgia Company and Mississippi Company to be hereinafter collectively designated as Power Companies.

Witnesseth

Whereas, the parties hereto, on January 4, 1934, entered into a contract for the purchase and sale of property, the interchange of power, and for other purposes, a copy of said contract being attached hereto and hereby made a part hereof; and

Whereas, through a misunderstanding on the part of the draftsmen of said contract as to the segregation of the

consideration stated for the properties in Alabama purchased and sold, Section 2 of said contract fails to carry out the true and correct intent and agreement of the parties at the time of the execution thereof; and

Whereas, none of the parties hereto has acted or changed its position in reliance upon said errors, and all of said parties are now desirous of correcting the said contract so as to make it embody the true intent and agreement which was originally intended to be expressed thereby;

Now, Therefore, in consideration of the covenants herein mutually entered into, the parties hereto covenant and agree as follows:

1. Section 2 of said contract of January 4, 1934, is hereby amended to express the true meaning and intent of the parties thereto as follows:

"2. Alabama Company covenants and agrees to convey to Authority, its nominee or nominees, immediately upon request, and from time to time as requested, any or all of its low tension 44 KV (or lower) transmission lines, substations (including the high tension station at Decatur and the Sheffield steam plant station) and all rural lines and rural distribution systems in the Counties of Lauderdale, Colbert, Lawrence, Limestone, Morgan (excluding the Hulaco area), north half of Franklin (including the town of Red Bay), and the territory in the northern part of Cullman served by a certain line of Alabama Company extending south from Decatur, all in the State of Alabama, said property being more particularly described in Exhibit B, attached hereto and hereby made a part hereof. Alabama Company further agrees promptly upon the execution of this contract to convey to Authority, its nominee or nominees, all of the real property which it owns within and adjacent to the area known as the Joe Wheeler dam site in the Counties of Lawrence and Lauderdale, in the State of Alabama, said property being more particularly described in

Exhibit C, attached hereto and hereby made a part hereof. Authority covenants and agrees that when it has taken all of such properties it will pay therefor an aggregate sum of One Million One Hundred Fifty Thousand ($1,150,000) Dollars. Authority agrees to pay for such properties on the respective dates of delivery thereof as follows:

(1) For the properties shown in Exhibit C, Forty Eight Thousand Seven Hundred Forty Four ($48,744) Dollars, which is 16.837015% of the price shown for such properties in said Exhibit:

(2) For each of the properties shown in Exhibit B, 66.267509% of the respective price shown for each of such properties in said Exhibit."

2. Except as herein amended, said contract of January 4, 1934, shall be and remain in full force and effect.

3. This amendatory contract is executed in sextuplicate and shall enure to and be binding upon the successors and assigns of the respective parties hereto.

In Witness Whereof the parties hereto have caused this instrument to be signed and sealed by their duly authorized officers, and attested under the hand and seal of their respective secretaries.

Commonwealth and Southern Corporation

By Wendell L. Willkie

President

Attest:

E. E. Nelson,

Secretary (Seal)

Alabama Power Company

By Thos. W. Martin

President

Attest:

Walter M. Hood

Secretary (Seal)

Tennessee Electric Power Company
By Jo C. Guild, Jr.
President

Attest:
B. F. Manning
Secretary (Seal)

Mississippi Power Company
By B. E. Eaton
President

Attest:
L. H. Crowell
Secretary (Seal)

Georgia Power Company
By P. S. Arkwright
President

Attest:
W. H. Wright
Secretary (Seal)

Tennessee Valley Authority
By Arthur E. Morgan
Chairman

Attest:
C. A. Bock
Secretary (Seal)

## EXHIBIT NO. 6.

Agreement made this 9th day of August, 1934, by and between Alabama Power Company, a corporation under the laws of Alabama (hereinafter called Vendor), and Tennessee Valley Authority, a corporation under an Act of Congress, (hereinafter called Vendee).

Witnesseth

In consideration of One Dollar ($1.00) and other good and valuable considerations to the Vendor paid by the Vendee, receipt of which is hereby acknowledged, the Vendor gives and grants unto the Vendee the right, privilege and option to purchase from the Vendor, on the terms and conditions hereinafter set forth, the following described property (hereinafter referred to as the Property), to-wit:

The urban distribution systems of Decatur (which includes Albany, which was merged into Decatur by act of Legislature), Austinville, Moulton, Hartselle, Falkville, Courtland, Town Creek, Leighton, Cherokee, Sheffield, Tuscumbia, Florence, Red Bay and Russellville, Alabama, consisting of all poles, wires, crossarms, pins, insulators, guys, transformers, structures, primary and secondary conductors, customers' meters, customers' services, customers' appliance wiring and all other miscellaneous devices now connected to said urban distribution systems and all rights of way, easements, permits, licenses, and unexpired franchises heretofore acquired by Vendor and forming a part of such urban distribution systems insofar as transferable; exclusive of all property which the Vendor by said contract of January 4, 1934, agreed to sell to Vendee and exclusive of the following:

(a) All land and buildings except those specifically required and forming a part of the urban distribution systems optioned hereunder:

(b) Shop buildings, and sites, warehouses and storeroom buildings and sites (except part of Russellville warehouse owned by Alabama Power Company), office buildings and sites, general equipment, furniture and fixtures, tools, testing equipment, transportation equipment and automobiles, improvements to leased quarters, materials and supplies, including stock of transformers and meters not in service, merchandise stock, notes and accounts receivable, cash, extensions and additions made subsequent to the dates of valuations heretofore furnished Vendee.

(c) Wherever easements and rights of way are included, they are included only to the extent of the Vendor's interest. Vendor shall not convey under this option any franchises or rights necessary for the operation and maintenance of its high tension lines, such franchises and rights not being included in this option.

(d) If any of the lines included in the urban distribution systems covered by this option are located on the same rights of way on which are located other lines of the Vendor not covered by this option, such rights of way shall not be conveyed under this option, but the Vendee shall have the right to operate and maintain the line purchased without cost and for so long as it may be necessary or desirable for the operations of the Vendee, its successors or assigns.

(e) Conveyance of urban distribution systems pursuant to the provisions of this option shall be made subject to all agreements with other companies relating to the joint use of poles and facilities.

(f) If any of the lines included in this option occupy jointly structures with other lines of the Vendor, the structures are not to be conveyed under this option and the operation and maintenance of the structures shall be joint. The Vendee shall have the free use of such structures so far as may be necessary for the operation and maintenance of the lines included in this option and for so long as it may be necessary or desirable for the operations of the Vendee, its successors or assigns.

The properties to be conveyed at Sheffield include

telephone lines and equipment, testing equipment, Tri-Cities Substation at Nitrate Plant No. 2, and 11 KV line from Tri-Cities Substation to west boundary of Nitrate Plant No. 2.

1. The term of the option shall be until 3:00 o'clock p. m. Central Standard Time on the 14th day of November, 1934, and may be exercised at any time prior thereto. Vendee shall signify its election to exercise this option by notice, in writing, to the Vendor at its office in the city of Birmingham, Alabama. If the Vendee elects not to purchase the distribution system in the city of Florence, it shall so indicate in said notice. The date of the delivery of such notice is referred to herein as the purchase date. The Vendee may at any time after the purchase date, but prior to November 14, 1934, by notice similarly served, rescind its election to exercise said option. In such event, Vendee agrees to reimburse Vendor within thirty days, for all necessary expenditures incurred by the Vendor in connection with releases of the property from the liens of its indentures, preparation of abstracts and presentation of the matter of this sale to the Alabama Public Service Commission.

2. The Vendor, within fifteen days from receipt of a written request from the Vendee so to do, will file with the Alabama Public Service Commission its petition for the approval of the sale and conveyance of the Property in accordance with the terms hereof under the provisions of Section 9825, et seq., of the Code of Alabama. The Vendor agrees to prosecute such petition diligently, and Vendee will lend its assistance and co-operation in the prosecution of such petition.

3. In the event of the exercise of such option by the Vendee and the approval by the Alabama Public Service

Commission of the said sale and conveyance, the Vendor shall promptly proceed to take the necessary steps and do all things required of it so as to have the Property released from the liens of the Indentures of Mortgage of the Vendor. In the event all said releases from the liens of said Indentures of Mortgage shall for any reason not be ready and available for delivery within sixty days from the purchase date or from the date of approval of the Commission, whichever is of later date, then in such case the Vendee shall be under no obligation to purchase said Property, notwithstanding its election to exercise this option.

4. In the event of the exercise of such option by the Vendee, the Vendor will, within twenty days from the purchase date, deliver to the Vendee abstracts of title, extended to the date of purchase, of all real estate, except rights of way, which under the terms hereof is to be conveyed, with general covenants of warranty, and will, within such time, deliver to the Vendee all original documents of title, opinions on titles, maps, documents and other papers, relating to the title to the Property to be conveyed hereunder which it has. Such abstracts of title, opinions on titles, maps, documents and other papers, shall become the property of the Vendee upon the consummation of the sale and conveyance hereunder.

5. The Vendor agrees that as and when releases of the Property from the liens of all the Indentures of Mortgage referred to are ready for delivery, in accordance with Paragraph 3 hereof, it will thereupon deliver conveyance unto the Vendee of the Property, free and clear of all liens and encumbrances except for taxes not yet due and payable, with general covenants of warranty, provided, however, that the Vendor shall not be required to warrant

the easements or rights of way or interest therein to be conveyed hereunder other than against acts done by it. The Vendee agrees to accept such conveyances, in form satisfactory to its counsel, within twenty days from the date of receiving written notice from the Vendor, at its office in Knoxville, Tennessee, that all such releases of the Property from the liens of the Indentures are ready for delivery, and agrees to pay the purchase price to the Vendor at the office of The Commonwealth & Southern Corporation, 20 Pine Street, New York City, N. Y. upon delivery to it of such conveyances simultaneously with the execution of such releases by the Trustees in the Indentures and Supplemental Indentures of Mortgage covering the Property. The Vendee will take possession of said Property simultaneously with the delivery of conveyances.

6. The purchase price for the Property shall be the sum of One Million Dollars ($1,000,000.) cash; provided that if the Vendee elects not to purchase the distribution system in the city of Florence, then the purchase price for the Property to be conveyed (exclusively of the Florence distribution system) shall be the sum of Eight Hundred Thirty-nine Thousand Two Hundred Sixteen Dollars and Three Cents ($839,216.03).

7. The conveyance of the property shall be to the Vendee or to such nominee of the Vendee as it may designate; such nominee may be designated as to all or any part of the Property, and in the event such nominee is designated as to a part of the Property, the remainder shall be conveyed to the Vendee.

8. Taxes, licenses and assessments for the current tax year and the current license year respectively shall be pro-rated between the parties as of the date of closing.

9. This agreement shall inure to the benefit of, and shall be binding upon, the parties hereto, their successors and assigns.

In Witness Whereof, the Vendor has caused these presents to be executed for it by Thos. W. Martin, its President, under its corporate seal, which is attested by its Secretary, and the Vendee has caused the execution hereof by Arthur E. Morgan, its Chairman, Board of Directors, under its corporate seal, which is attested by its Secretary, such officials being thereunto duly authorized by their respective principals, the day and year first above written.

Alabama Power Company,
By Thos. W. Martin,
Its President.

Attest:

Walter M. Hood,
Its Secretary

Tennessee Valley Authority,
By Arthur E. Morgan,
Its Chairman, Board of
Directors.

Swidler

Attest:

Charles E. Hoffman,
Its Asst. Secretary.

JMG
CAB

State of Alabama }
Jefferson County }

I, Mary E. Johnson, a Notary Public in and for said County, in said State, hereby certify that Thos. W. Martin and Walter M. Hood whose names as President and Secretary respectively, of Alabama Power Company, a corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office, this 9th day of August, 1934.

Mary E. Johnson,
Notary Public (Seal)

State of Tennessee }
County of Knox }

I, Jerome M. Allen, a Notary Public in and for said County, in said State, hereby certify that Arthur E. Morgan and Charles E. Hoffman, whose names as Chairman and Asst. Secretary respectively, of Tennessee Valley Authority, a corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office, this 11th day of August, 1934.

Jerome M. Allen,
Notary Public (Seal)

My Commission Expires Jan. 13, 1935.

## EXHIBIT NO. 7.

### Quotations From Public Announcements or Releases by Tennessee Valley Authority in Furthering the Tennessee Valley Authority Power Program.

(Section 34—Bill of Complaint.)

1. "In order to fully understand the reasons for the power program set out in the Tennessee Valley Authority Act, it is necessary to recall what has been happening in the United States during the past ten years. It is necessary to understand that the people back home have become thoroughly aroused and that they are determined that the disgrace which was cast upon the electric industry during the past decade, and the losses which have been visited upon investors in public industries is not to be repeated.

"You are all thoroughly familiar with the sordid story. I need not recall to your minds the quarter of a million dollars which Samuel Insull paid to the Chairman of the Illinois Public Utilities Commission. Those of you who are investors in public utility securities are familiar with the story of gross inflation, of the pyramiding of stocks, of write-ups, of bonuses, of the purchase of isolated utility plants at outrageous and unreasonably high figures and the issuance of securities on the basis of such prices. Instances of these practices can be cited to you almost from coast to coast.

"I have no desire to intimate that every important executive in the public utility business followed such practices, but there can be no question that in the last decade the dominate power was in the hands of financial pirates and free-booters."—November 7, 1933.

2. "Now this is what had been going on throughout the

United States—financial excesses, political corruption, an enforced frugality in the use of a great natural resource."—April 25, 1934.

3. "Twenty million American homes are to be denied the full benefits of a great national resource in order that inflated stock may pay out."—April 25, 1934.

4. "I am not an alarmist, but I want to warn you that powerful forces are at work to deprive the South of the greatest opportunity which ever came to any people. A year ago the disciples of greed and blindness that brought this country to the verge of a collapse had hurried into the storm cellars, whimpering and crying for help. • • •

"The people of the country must choose whether to follow the leadership of the President or the leadership of the selfish and blind that brought us so close to destruction.

"The first great test is in your hands here in the Tennessee Valley. Under the cover of various disguises, powerful forces are at work to destroy the long-time objectives of the Tennessee Valley Authority. In order to fill their own pockets, these powerful groups are ready at any cost to destroy the Tennessee Valley Authority's program and to keep the President's objectives from being fulfilled."—June 22, 1934.

## EXHIBIT NO. 8.

### Executive Order

(No. 6514)

### Authorizing the Formation of a Corporation to Be Known as Electric Home and Farm Authority, Inc.

Whereas, the Congress of the United States has in the National Industrial Recovery Act, approved June 16, 1933 (Public, No. 67, 73d Cong.), declared it to be the "policy of Congress * * * to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, * * * to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production * * *, to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry * * *," and

Whereas, in order to effectuate such policy the President is "authorized to establish such agencies * * * as he may find necessary * * *," and

Whereas, in order, effectively and efficiently, to carry out said policy of the National Industrial Recovery Act, it is expedient and essential that a corporation be organized having the powers and functions of a mortgage-loan company and such other powers and functions as may be necessary to accomplish the purposes of said act;

Now, therefore, under and by virtue of the authority vested in me by the National Industrial Recovery Act of June 16, 1933, it is hereby ordered that an agency, to wit, a corporation, under the laws of the State of Delaware, be

created, said corporation to be named the Electric Home and Farm Authority, Inc.

The governing body of said corporation shall consist of a board of directors composed of three (3) members, and the following persons, who have been invited and have given their consent to serve, shall be elected by the incorporators as such directors:

| | |
|---|---|
| Arthur E. Morgan | Director and Chairman, Tennessee Valley Authority. |
| Harcourt A. Morgan | Director, Tennessee Valley Authority. |
| David E. Lilienthal | Director and General Counsel, Tennessee Valley Authority. |

The office and principal place of business of said corporation outside of the State of Delaware shall be at such place in any of the Tennessee Valley States as the board of directors shall select and determine, and offices may be established in such places as said board of directors shall select and determine.

The capital stock of said corporation shall consist of ten thousand (10,000) shares of the par value of one hundred ($100) dollars each.

The persons above named are hereby authorized and directed to cause said corporation to be formed, with such articles or certificate of incorporation, and bylaws, as shall be deemed requisite and necessary, and to define the methods by which said corporation shall conduct its business.

The persons above named are hereby authorized and directed to subscribe for all of said capital stock for the use and benefit of the United States. There is hereby set aside for the purpose of subscribing to the capital stock in said corporation the sum of one million ($1,000,000) dollars out of the appropriation of $3,300,000,000 authorized

by Section 220 of the National Industrial Recovery Act and made by the Fourth Deficiency Act, fiscal year 1933, approved June 16, 1933 (Public, No. 77, 73d Cong.).

It is hereby further ordered that any outstanding stock standing in the name of the United States shall be voted by the directors of the Tennessee Valley Authority, jointly, or by such person or persons as the said directors of the Tennessee Valley Authority shall appoint as their joint agent or agents for that purpose.

The board of directors (other than the initial board of directors) shall be elected, and any vacancies thereon shall be filled by the directors of the Tennessee Valley Authority, jointly, subject to the approval of the President.

The board of directors may, without regard to the provisions of the civil-service laws or the Classification Act of 1923, as amended, appoint and fix the compensation and prescribe the duties, authorities, responsibilities, and tenure of such officers and employees, and make such expenditures (including expenditures for personal services, and rent at the seat of the Government and elsewhere, for law books and books of reference, and for paper, binding and printing) as may be necessary to carry into effect the provisions of this order. The board of directors may also, with the consent of any board, commission, independent establishment, or executive department of the Government, including any field service thereof, avail itself of the services of the officers, employees, and the facilities thereof and, with the consent of the State or municipality concerned, may utilize such State and local officers and employees as it may deem necessary.

Franklin D. Roosevelt.

The White House,
December 19, 1933.

## EXHIBIT NO. 9.

### Representative Public Announcements of TVA as to the Agency Relation of Electric Home and Farm Authority, Inc.

"The arrangement provides the machinery for early operation of the Authority's plan for the distribution of low-cost standard electric appliances, such as ranges, water pumps, hot water heaters, refrigerators, and portable motors, pursuant to the powers of the Electric Home and Farm Authority, a subsidiary of the TVA, created by order of President Roosevelt December 19. While the specific terms have not yet been agreed upon between the power companies who are parties to this contract and the Electric Home and Farm Authority, this contract and the rate reductions insure the successful consummation of such a working arrangement in the immediate future. This means that the first operation of the Electric Home and Farm Authority's program of distribution of low-cost electric appliances will be in the area served directly by the TVA, acquired by this arrangement, and in the area served by the parties to this contract."—January 5, 1934.

"In common with other recently created agencies of government, the Tennessee Valley Authority has a definite duty and a definite role to play in this new function of government as a stimulating and coordinating force. There are a number of illustrations in the work of the Tennessee Valley Authority of this need of government stimulation. The most recent, and perhaps the best illustration, is afforded by the creation a few days ago, by order of President Roosevelt, of a subsidiary of the Tennessee Valley Authority, a Delaware corporation known as Electric Home and Farm Authority. The occasion for the creation of this

agency and a brief analysis of its functions will show how the government can act as a stimulator and coordinator in its relation to business."—January 6, 1934.

"By Executive Order, the agency known as Electric Home and Farm Authority was created to cooperate with business in an effort to break this impasse and to bring the benefits of a wide use of electricity at low cost to consumers throughout the seven Tennessee Valley States."—January 6, 1934.

"The Electric Home and Farm Authority is a special agency created by executive order of the President to carry out an appliance program for TVA. Its central offices are to be established at Chattanooga."—April 5, 1934.

"By direction of the President the Authority has established an agency known as the Electric Home and Farm Authority."—May 17, 1934.

"But more important still to you as institutional investors in this great industry is the program under way to increase the use of electricity for domestic, rural and industrial purposes. This project of the Authority, created by order of the President of the United States, and backed by a million dollars of capital and ten million dollars of credit, is being launched next week throughout the Valley. This undertaking holds great promise for the stabilization of earnings for this whole industry. For obviously if the experiment is as successful in the Tennessee Valley as experienced private utility operators predict, then it can be adapted to other sections of the country."—May 17, 1934.

## EXHIBIT NO. 10.

Agreement, made and entered into this 21 day of May, 1934, between Electric Home and Farm Authority, Inc., a corporation organized and existing under the laws of the State of Delaware, in its individual corporate capacity, hereinafter called "Authority"; and Electric Home and Farm Authority, Inc., as Trustee under a trust deed executed in May, 1934, to secure an issue of notes to aggregate not in excess of Ten Million ($10,000,000) Dollars, hereinafter called "Trustee"; and Alabama Power Company, a corporation organized and existing under the laws of the State of Alabama, hereinafter called "Utility":

Witnesseth

Whereas, Authority has conducted negotiations with manufacturers, dealers and other electric utility companies, and has as a result thereof developed a plan for the distribution and sale of standard quality electric appliances at lower prices and on easier terms than have heretofore been generally available; and

Whereas, Authority, as a part of said plan has secured the agreement of certain manufacturers to place on the market electric appliances of approved quality at prices which will make such appliances available to a large class of users who have heretofore been unable or unwilling to purchase such appliances; and

Whereas, Authority proposes to finance the sales of such appliances at low finance charges and over long periods of time, with the result that the market for such appliances will be further extended to include a new and wide class of users who have heretofore been unable to purchase such appliances; and

Whereas, Authority proposes to co-operate with manufacturers, dealers, and electric utility companies who are co-operating in the plan by advertising, demonstration, or such other means as Authority deems advisable, to promote the widespread purchase and use of domestic electric appliances, and thereby to make possible an increased use of electricity in the home; and

Whereas, the plan provides for the billing of purchasers of said appliances along with the regular monthly service bills of Utilities co-operating in the plan and is therefore limited to customers of such co-operating Utilities; and

Whereas, Utility has signified its willingness to co-operate in the plan, to the end that Utility and its customers may share in the benefits of the plan; and

Whereas, it is expected that there will be a substantial increase in the purchase and use of domestic electric appliances by customers of Utility as a result of Utility's co-operating in the plan, and that the use of Utility's electric current will be increased accordingly, to the mutual advantage of all parties involved,

Now, Therefore, in consideration of the mutual covenants herein contained, the parties hereto for themselves, their successors and assigns, covenant and agree, as follows:

Article 1: The special terms used herein shall have the following definitions:

"Approved Appliance" shall mean an electrical appliance bearing, with permission of Authority, Authority's insignia, which is a design embodied in Design Patent No. 92156 issued by the United States Patent Office. "Manufacturer" shall mean the manufacturer of an Approved Appliance. "Retailer" shall mean a retailer who is approved by Au-

thority to sell Approved Appliances. "Purchaser" shall mean an ultimate user to whom a Retailer sells at retail an Approved Appliance. "Customer Paper" shall mean chattel mortgages, conditional sale contracts, leases, promissory notes, or other forms of obligation given by purchasers and accepted by Retailers on the sale of Approved Appliances.

Article 2: Utility will, in accordance with the terms and conditions herein contained, and as agent for Authority and/or Trustee, receive Customer Paper from Retailers, advance to Retailers the purchase price of such Customer Paper, and collect installments due on Customer Paper.

Article 3: Utility will receive Customer Paper from Retailers and advance to Retailers the purchase price thereof only upon the following conditions:

(a) The Purchaser to whom the Approved Appliance is sold must be using electric service of Utility; and the Approved Appliance must be sold for installation in a residence for domestic use;

(b) The Customer Paper must be on forms prescribed and furnished by Authority, completely and properly filled out, and properly assigned by Retailer on the assignment form on the Customer Paper;

(c) The total amount of Customer Paper received from any Retailer and arising out of the sale of any Manufacturer's Approved Appliances must be within the amount in which the Retailer is approved in writing by Authority as to such manufacturer. (Authority will notify Utility of the amount in which each Retailer is approved as to each Manufacturer. Any Retailer may be removed from an approved list/at any time, or the amount in which any Retailer is approved for any Manufacturer may be changed. Utility will be notified of any such removal or change);

(d) Utility shall not, except with written consent of Authority, advance the purchase price of any Customer Paper to any Retailer if such Retailer did not, during the thirty (30) days preceding the offer of such Customer Paper, tender to Utility any other Customer Paper, except that this provision shall not apply to Customer Paper arising from the sale of any Manufacturer's Approved Appliances within the first thirty (30) days after the Retailer is approved as to such Manufacturer;

(e) Retailers who have sold any Customer Paper to Authority or Trustee are required to offer for sale to Authority and/or Trustee all Customer Paper thereafter received by them until Retailer shall have given to Authority thirty (30) days written notice of his intention to discontinue such practice. Utility shall not advance the purchase price of any Customer Paper to any Retailer who Utility knows or believes is not complying with this requirement;

(f) Utility shall not, without written consent of Authority, advance the purchase price of any Customer Paper which is not presented by a Retailer within thirty (30) days after sale of the Approved Appliance for which it was received;

(g) Utility shall not receive or advance the purchase price of any Customer Paper if the net cash sale price at which the Approved Appliance was sold to the Purchaser was in excess of the Manufacturer's suggested retail price approved by Authority;

(h) Utility shall not receive or advance the purchase price of any Customer Paper unless the finance charges thereon are in accordance with Authority's then prevailing chart of finance charges and unless the following requirements are observed:

The maximum period for which credit may be extended shall be three (3) years where one Approved Appliance is sold, and four (4) years if two or more Approved Appliances are sold to the same Purchaser at the same time under the same contract. There shall be minimum equal monthly payments of at least Two (2.00) Dollars on each contract, and the down payment shall be not less than the monthly installment;

(i) Utility shall not receive any Customer Paper from or advance the purchase price thereof to any Retailer who is known by Utility to be in default under, or violating any of his obligations to Authority and/or Trustee, except that after demand has been made on Retailer to repurchase any Customer Paper, Utility may in its discretion receive Customer Paper offered by Retailer within the ten (10) days following the demand, and shall set-off the new Customer Paper against the amount owing by Retailer. Utility shall in no case receive any Customer Paper from a Retailer who has failed to meet within ten (10) days after demand his obligation to repurchase any Customer Paper;

(j) If Utility shall have notified Authority, or should have notified Authority, as provided in Article 14 hereof, of any reason why it deems immediate action against any Retailer advisable or necessary to protect Authority's or Trustee's interests, Utility shall not thereafter receive any Customer Paper from, or advance the purchase price thereof to, such Retailer;

(k) If Customer Paper is offered by Retailer which was received in payment for an approved range or water-heater which Utility refuses to install, or if by reason of any credit information Utility may have on the purchaser or for any other reason Utility deems that any Customer

Paper offered by Retailer may be unsatisfactory to Authority and/or Trustee, Utility shall not pay the Retailer therefor, but shall forward to Authority the Customer Paper offered, together with a statement of the reasons why Utility deems it unsatisfactory, and shall inform the Retailer that Utility is unable to pass upon the acceptability of such paper and that such paper has been sent to Authority for acceptance or rejection.

Article 4: Utility will receive from purchasers who are using electric service of Utility monthly installments on Customer Paper and will pursue the following procedure with reference to collection of such installments:

(a) Utility will send to Purchaser, along with the monthly service bill of Utility, notice of each installment due. The installment will be considered delinquent if not paid within ten (10) days from its due date;

(b) If installment is not paid, Utility will send a delinquent notice to purchaser within ten (10) days after the installment becomes delinquent;

(c) If installment is still unpaid at the time for mailing the next monthly service bill, Utility will send to Purchaser a second delinquent notice with that monthly service bill;

(d) Utility will assign a collector to contact Purchaser between thirty (30) and forty (40) days after delinquency;

(e) If the installment is unpaid forty (40) days after delinquency, Utility will, within five (5) days thereafter, notify Retailer of the delinquency and send Authority a copy of this notice;

(f) If the installment is unpaid fifty (50) days after delinquency, Utility will, within five days thereafter, send

demand notice to the Retailer to repurchase the Customer Paper according to his repurchase agreement, and send Manufacturer a copy of this demand notice;

(g) If, sixty (60) days after Purchaser's delinquency, Retailer has not repurchased the Customer Paper and Purchaser has not paid all installments then due, Utility will, within five (5) days thereafter, notify Authority of such default on the part of Retailer.

Article 5: Utility shall ascertain within thirty (30) days after the purchase of each item of Customer Paper, whether or not the Approved Appliance for which the Customer Paper purports to have been received in payment was actually delivered to the purchaser; and shall immediately upon ascertaining that Customer Paper has been purchased for which no Approved Appliance was delivered notify Authority accordingly and shall not thereafter receive any Customer Paper from, or advance the purchase price thereof to the Retailer involved.

Article 6: At the request of any Retailer, Utility shall furnish to such Retailer any credit information Utility may have on a proposed Purchaser, and Authority shall indemnify Utility against any liability incurred by Utility as a result thereof.

Article 7: Utility shall, except as otherwise provided in subsection (k) of Article 3 hereof, immediately upon receipt of Customer Paper, advance to Retailer the amount of Retailer's cash sale price for the Approved Appliance, less the down payment thereon and any installments due on or before the date of acceptance. Utility shall send to Authority each business day a statement of the amount of Customer Paper received and paid for by it for Authority and/or Trustee; which statement shall be on a form mutu-

ally agreed upon, and which shall be accompanied by a duplicate original copy of each item of Customer Paper bought. Utility shall retain another duplicate original copy which shall be returned to the Purchaser through the Retailer when the contract is paid up and closed out. Authority will, upon receipt of each such statement, forward to Utility the amount paid by Utility for Customer Paper. Utility shall, at the time it receives each item of Customer Paper, place thereon numbers indicating: (1) The retailer; (2) the serial number of the contract as to the Retailer; and (3) the serial number of the contract as to the Utility. These numbers shall be placed on all contracts received by Utility, whether the purchase price is advanced by Utility or the Customer Paper is forwarded to Authority for acceptance or rejection.

Article 8: Utility shall each business day forward to Trustee all collections on Customer Paper, together with all sums received from Retailers, accompanied by a statement on a form, mutually agreed upon by the parties, of collections and sums received from Retailers. Any employee of Utility is hereby authorized to indorse to Utility, for deposit only, any check payable to Authority or Trustee which is received by Utility in payment on Customer Paper.

Article 9: Utility shall submit to Authority each business day a statement showing the total outstanding balance on all Customer Paper purchased by Utility for Authority and/or Trustee, on which Utility is still making, or attempting to make, collections.

Article 10: It is understood and agreed that title to all Customer Paper, from the instant the same comes into Utility's possession, shall be vested in Trustee; and Utility

shall immediately, upon receipt of same, place on all Customer Paper a stamp which will be furnished by Authority, indicating that the Customer Paper is the property of the Trustee. Utility shall at all times keep all Customer Paper and accounts in connection therewith entirely separate and distinct from all other papers, accounts, and records of Utility. Title to all collections on Customer Paper shall, from the instant same comes into possession of Utility, be vested in Trustee. Utility shall secure each day from each of its branch offices a statement of collections made. Utility agrees that when any collections are deposited in a branch office depository, the first sums thereafter transferred to the central office depository, up to the amount of that branch office's collections which have not at the time been received by Trustee, shall be deemed to be such collections. Any loss of collections shall be borne by Utility, until collections are received by Trustee. Utility shall secure the extension of protection, under bonds covering Utility's employees who handle collections, to protect Authority and Trustee and to cover moneys belonging to Authority and/or Trustee.

Article 11: Utility's books, accounts, correspondence, and other records, pertaining to Customer Paper and collections, shall at all times be open for inspection by Authority, and by the Comptroller-General of the United States. Utility shall furnish to Authority and to the Comptroller-General of the United States, upon request, any reasonable information requested by either and pertaining to Customer Paper, or to collections, or to any other matter in connection with Customer Paper or collections thereof.

Article 12: Utility shall be obligated to furnish to Retailers all information available to it with reference to the operation of Authority's plan of financing Customer Paper

shall maintain a supply of Purchaser contract forms, rate charts, pamphlets, (all of which will be furnished by Authority), and distribute the same to Retailers; and shall immediately forward to Authority all communications and inquiries from either Retailers or Purchasers, which Utility is unable to answer or which for any reason require the attention of Authority.

Article 13: Utility shall immediately notify Authority and Retailer concerned:

(a) If Utility's electric service is for any reason discontinued to any Purchaser who is thirty (30) days or more in default in payment of any installment due on Customer Paper:

(b) If, to Utility's knowledge, any Purchaser moves off of Utility's lines, or moves and leaves behind an Approved Appliance on which unpaid Customer Paper is held by Authority or Trustee:

(c) If, to Utility's knowledge, any Approved Appliance securing Customer Paper which is thirty (30) days or more in default is removed from the place originally installed, or is injured, or if for any other reason Utility deems that Authority's or Trustee's rights in such Approved Appliance or the security thereof are jeopardized:

(d) If, to Utility's knowledge, any Purchaser is in default in any obligation under his contract, or becomes insolvent, or if a petition in bankruptcy or for a receiver is filed by or against the Purchaser, or if for any other reason Utility deems action against the Purchaser advisable or necessary to protect Authority's or Trustee's interests. This provision does not apply to a default of a Purchaser in payment of installments due, the procedure in such case being as provided in Article 4 hereof.

The notice to Authority shall contain a statement of Utility's opinion as to whether or not the Retailer involved will be able to and willing to repurchase the Customer Paper involved if so required; and Authority shall indemnify Utility against any liability incurred by Utility as a result of furnishing this information to Authority.

Article 14: If, to Utility's knowledge or belief, any Retailer is in default under, or is violating any obligation of, his contract with Authority and Trustee, or ceases to do business as a going concern, or becomes insolvent, or if a petition in bankruptcy or for a receiver is filed by or against any Retailer, or if for any other reason Utility deems action against any Retailer necessary or advisable to protect Authority's or Trustee's interests, Utility shall immediately notify Authority.

Article 15: Utility shall, at its own expense and without cost to the Purchaser, install inside wiring for approved ranges and water heaters and inside piping for water heaters for Customers on Utility's lines, unless Utility does not approve the credit of the Purchaser, or does not believe Purchaser's residence is sufficiently permanent to justify the expense of such installation, or unless the cost of installation is more than Thirty-five ($35.00) Dollars and the Purchaser is unwilling to pay the excess. Utility shall obtain consent of Authority before refusing installation for any other reason.

Article 16: If any Purchaser whose Customer Paper is being collected by Utility hereunder transfers his Approved Appliance or Appliances from one point on Utility's lines to another point on Utility's lines, Utility will continue to make collections from Purchaser in accordance with the regular collection procedure set out herein. If

electric service of any Purchaser whose Customer Paper is being collected by Utility is temporarily cut off for any reason other than non-payment of Purchaser's electric service bill, Utility will continue to make collections from Purchaser in accordance with the regular collection procedure set out herein, and any notice which would have been sent to Purchaser with Purchaser's monthly service bill shall be sent to Purchaser on approximately the same day of each month on which the last regular monthly service bill was sent to Purchaser.

Article 17: This contract does not authorize Utility to act as a Retailer under Authority's plan, but Utility may act as a Retailer upon signing Authority's standard form of contract for Retailers.

Article 18: Authority will pay to Utility the sum of One ($1.00) Dollar as booking charge for each item of Customer Paper purchased by Authority or Trustee through Utility, each contract being considered as one item. This sum will be paid to Utility at the same time Authority reimburses to Utility the sum expended by Utility in paying Retailer for the Customer Paper. In addition, Authority will pay to Utility, at the end of each month, as collection and billing charge, the sum of twelve and one-half (12½c) cents on each contract on which Utility has sent to the Purchaser during that month a first notice of installment due. Payment of the above sums will constitute payment in full for all services to be performed by Utility hereunder, including all space, mailing service, telephones, personal services, and supplies, except that Authority will furnish to Utility purchaser contract forms, rate charts, and any other standard forms regularly made up by the Authority.

Article 19: Utility may consent that any Retailer make a new contract with the Purchaser of any Customer Paper not in default, if the purpose is to extend the time of credit for payment of the balance due under the original Customer Paper; Provided, that the term of the new contract, plus the time then elapsed since the original contract was executed, shall not exceed the maximum period of time for which credit could have been extended under the original contract, and that the new contract in every other respect meets the requirements of Customer Paper as set out in Article 3 hereof.

The amount of the refinanced contract (which in the making of the refinanced contract shall be treated for all purposes as though it were the cash sale price of the appliance under an original contract) shall be the balance owing under the original contract less unearned finance charges, which latter sum shall be determined as provided in Article 20 hereof. Such refinanced contracts shall thereafter be considered as Customer Paper for all purposes of this contract, and Utility shall be entitled to the same sums for its services in connection therewith as in the case of original Customer Paper. Utility shall not, in any other manner, without written consent of Authority, waive, adjust, compromise, extend, or renew any right which Authority or Trustee may have against any purchaser or Retailer.

Article 20: If any Customer Paper is refinanced, as provided in Article 19 hereof, or is repurchased by Retailer, or is paid up in full in advance of maturity, the amount due on the Customer Paper at that time shall be the unpaid face amount less unearned finance charges, the latter to be determined as provided in Authority's then prevailing chart of finance charges.

Article 21: If, by reason of any default of Utility in the performance of any of its obligations under this contract, Authority or Trustee shall lose any of its rights with reference to any Customer Paper against any Purchaser, Retailer, or Manufacturer, Utility shall immediately, upon demand, purchase from Authority or Trustee, at a price equal to the unpaid face amount thereof, any such Customer Paper.

Article 22: This contract shall inure to the benefit of and bind the successors and assigns of the parties hereto to the same extent as the original parties, and shall be in effect from the date of execution until cancelled by either party by thirty (30) days written notice to the other party. Such cancellation shall not affect any obligation of any party with respect to Customer Paper purchased prior thereto.

Article 23: It is agreed that if any change in the obligation of Utility with reference to receiving or collecting of Customer Paper is mutually agreed on by the parties hereto, such change may be authorized by a letter from Authority to Utility and such letter, when acknowledged by Utility, shall become a part of this contract, which shall otherwise remain unchanged and in full force and effect.

Article 24: The parties hereto agree that Trustee has no obligations hereunder, but that any obligation of Authority hereunder may at the option of Authority and Trustee (or any successor of Trustee) be performed by Trustee (or any successor of Trustee) and that such performance will be accepted by Utility as a compliance with this contract to the same extent as though such performance had been by Authority itself. The parties hereto further agree that all of Utility's obligations hereunder, how-

ever expressed and to whomsoever stated to run, shall be deemed to run severally to Trustee (or any successor of Trustee) and to Authority, and any of said obligations may at any time and from time to time be enforced severally, in whole or in part, by suit or otherwise, by Authority or by Trustee (or any successor of Trustee): Provided, that satisfaction to one shall constitute satisfaction to both.

In Witness Whereof, the parties hereto have caused this contract to be executed and their respective seals to be affixed hereto the day and year first above written.

(Seal) Alabama Power Company
By Thos. W. Martin
President

Attest:
Walter M. Hood
Secretary

(Seal) Electric Home and Farm Authority, Inc.

Attest: By David E. Lilienthal
Harcourt A. Morgan
Secretary

(Seal) Electric Home and Farm Authority, Inc.
Trustee under a trust deed executed in May, 1934, to secure an issue of notes to aggregate not in excess of Ten Million ($10,000,000) Dollars.

Attest: By David E. Lilienthal
Harcourt A. Morgan
Secretary

## EXHIBIT NO. 11.

### Representative Overstatements and High Pressure Appeals of EHFA Appliance Promotion Campaign.

1. "Cheap electricity will not alone make home-life comfortable, but will help to provide a permanent livelihood. Electrically operated tool industries and small farming plots for each family will assure every household a secure, comfortable life."—Toward an Electrified America—EHFA Colored Folder.

2. " 'Electricity for all' includes industry in its meaning. Manufacturing will benefit from the cheap power produced from the fully controlled river. See on the map (upper center) the occurrence of phosphates—at other points the presence of bauxite. With the application of power bauxite becomes aluminum and phosphates become fertilizer. Cheap power in large quantities will turn many other minerals in the region to man's use. In homes and industry the greater the quantities of electricity utilized the greater the benefits to people. New electro-chemical and electro-metallurgical processes require large blocks of power. Ranges, refrigerators, water-heaters, and farm pumps also require electricity in larger quantities than has been customary. For volume utilization, electricity must be cheap. Public control over rivers will produce cheap electricity. 'Electricity for all' means enough electricity for all and for all uses—at a price the average man can pay." ib.

3. "The Government has charged the Authority with the definite responsibility of protecting your income." ib.

4. "Electric lighting is the first great use for cheap elec-

tricity on the farm. At 4 o'clock on winter mornings the farmhouse and barnyard are brilliantly lighted. The farmer carries out his early morning tasks with ease and quickness. Barn, cattleyard, poultry-pens, dairy—when fully lighted, are rapidly cared for. The farm woman, too, gets through her early work rapidly; she no longer carries a lamp from room to room; morning duties in kitchen and bedrooms are attended to in half the time. When early dusk settles—before the cows have been milked or the horses unharnessed—electricity gleams again. Evening chores are completed in a light which is the practical equivalent of day." ib.

5. "The labor of pumping and bucketing water into the home—usually a task for farm women—is done away with forever. Cheap electricity breaks the farmer's indoor drought. Now he may have a sanitary well-equipped bathroom." ib.

6. "If your rates have been approved by the Authority, ask your dealer (or the man in charge of your utility company's display room) to show you the special standard-quality ranges, refrigerators, and water-heaters which leading electrical goods manufacturers are distributing today under the insignia of the Authority at prices ⅓ below normal.

"Look for the insignia of the Authority on these special low-cost appliances—the red, white and blue mark of approval by your Federal government shown on the covers of this booklet. The insignia may not be displayed in neighborhoods where rates are too high for the average family." ib.

7. "Ask your dealer (or utility company) about the Government's easy purchase plan. You can own all three of the

electric appliances which are basic to the health and comfort of your family—range, refrigerator, and water-heater—for as little as $5.33 per month. You can have as long as four years to pay. Your utility company will put the charges on your monthly bill for electric current. For one appliance the charge may be as low as $2.31 a month.

8. "This little booklet will tell you how your Government, through Electric Home and Farm Authority, is trying to bring you the full benefits of low-cost electricity."—EHFA Press and Publication. G-1.

## EXHIBIT NO. 12.

**Averments as to the Development of Power by Alabama Power Company for Distribution Throughout Its System in Alabama Pursuant to State Laws, Federal Grants and Licenses, Constituting Part of Section (41).**

(a) The legislature of Alabama had by general law (Code of 1907, Sections 3627-37) granted to domestic corporations which by their charter had the right to manufacture, supply and sell to the public power produced by water as a motive force, and to corporations organized with like charter powers under the laws of any other state in the United States and which had complied with the Constitution and laws of the State of Alabama as to foreign corporations, the right, power and authority to construct and operate such dams and works on navigable streams as might be required or deemed expedient in the manufacture and supply of power produced by water as a motive force (Section 3627). It was further provided (Section 3634) that any dam erected in accordance with the provisions of the statute referred to should be considered a dam authorized by the legislature of the state at the particular site selected and of the specific height and dimensions determined upon.

The first water power development constructed by the Power Company was under a grant by the State of Alabama, supplemented by an Act of Congress (34 Stat. at L. 1288) approved March 4, 1907, granting to Alabama Power Company the consent of Congress to build a dam across the Coosa River, a navigable stream, at Lock 12 "for the development of water power, and such works and structures in connection therewith as may be necessary or convenient in the development of said power and in the utili-

zation of the power thereby developed"; the plans for the construction of the dam and works to be approved by the Chief of Engineers and the Secretary of War, and to be limited "to the use of the surplus water only of the river not required for the navigation of the Coosa River . . .". The act further provided (Section 2) that the dam should be so constructed that the government of the United States might at any time construct in connection therewith a suitable lock or locks for navigation purposes, the government to control the dam or the structures and the level of the pool so far as shall be necessary for purposes of navigation,

> "but shall not destroy the water power developed by said dam and structures to any greater extent than may be necessary to provide proper facilities for navigation, and that the Secretary of War may at any time require and enforce, at the expense of the owners, such modifications and changes in the construction of such dam as may be necessary in the interest of navigation: . . . ."

The Power Company completed the construction in 1914 of the dam at Lock 12 (now Lay Dam), the total capacity now being 109,000 h. p.

(b) In order to meet the constantly growing demands of the public for power the Power Company was required during the years 1914-1930 to install additional capacity and transmission lines in order to be in position to serve potential demands and to give continuous service, all in accordance with plans submitted after 1920 to Alabama Public Service Commission (and in case of dams on navigable streams to the Federal Power Commission).

(c) The legislature of Alabama heretofore enacted the Public Utility Act of 1920, effective November 1, 1920, Sec-

tion 49 of which, relating to certificates of convenience and necessity, is now contained in the Code of 1923 as Section 9795, set out in Section (5) of this bill of complaint.

(d) The Power Company on November 6, 1920 filed with the Alabama Public Service Commission a petition for a certificate of convenience and necessity for a hydro-electric power development on the Coosa River at Duncan's Riffle and for a transmission line to connect the same with the Power Company's system near Lock 12 on the Coosa River, in order to enable the Power Company to transmit the power generated at such proposed power house at Duncan's Riffle into its existing system and thereby to supply the same to the public. The Commission on November 17, 1920 granted such petition and issued such certificate, finding, among other things, that the proposed development was well considered, would conserve the water resources of the region and would enable the Power Company to produce at a reasonable cost a large quantity of power to feed into its system, and that it was "to the best interest of all concerned that the contemplated improvement as detailed in the petition be made as speedily as possible."

(e) (i) Theretofore on October 23, 1920, the Power Company had filed with the Federal Power Commission under the provisions of the Federal Water Power Act (41 Stat. at L. 1063; 16 U. S. C., Sections 791-823) an application to build the dam and power house at Duncan's Riffle. Being required by such Act and the regulations issued thereunder to indicate the proposed use or market for the power to be developed, the Power Company stated that it proposed to distribute the power by connecting the project with the system of the Power Company.

(ii) Upon consideration of the application the Commis-

sion found (1st An. Rept. Fed. Power Comm., p. 119 and pp. 204-212) that the project works were

> "necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, and in the Coosa River, a navigable waterway of the United States;"

also that the project proposed to be constructed

> "will be best adapted to a comprehensive scheme of development and utilization of said waterway for the purposes of navigation, of water power development and of other beneficial public uses;"

and that the improvement

> "is desirable and justified in the public interest for the purpose of improving and developing a waterway, viz., said Coosa River, for the use and benefit of interstate and foreign commerce, and that the license will not interfere or be inconsistent with the purpose for which any reservation affected thereby was created, . . . .".

(iii) The Commission issued the license (No. 82) to the Power Company

> "for the purpose of constructing, operating, and maintaining, for a period of fifty years from the date hereof, the project works hereinafter described, necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, and in the Coosa River; said license, including the period thereof, being subject to all the terms and conditions of the Act and of the rules and regulations of the Commission pursuant thereto . . . ."

(iv) Under the provisions of 16 U. S. C., Section 806, the licensee was required to begin and complete the con-

struction of the project works within the time fixed in the license and to

> "put into operation such part of the ultimate development as the commission shall deem necessary to supply the reasonable needs of the then available market, and shall from time to time thereafter construct such portion of the balance of such development as the commission may direct, so as to supply adequately the reasonable market demands until such development shall have been completed * * *."

(v) Under Article 2 of the license issued to the Power Company, the latter was required to begin the construction of the project works within six months after the date of the license and to complete the same within three years thereafter, such works

> "being such part of the ultimate development of said project as the Commission deems necessary to supply the reasonable needs of the available market at said time of completion."

(vi) Article 8 provides that the licensee shall construct and install such appliances as are necessary for furnishing power for the operation of navigation facilities and shall furnish such power to the United States free of cost.

(vii) Provisions are contained in Article 9 to the effect that whenever a project for navigation on the river between Wetumpka and the East Tennessee, Virginia & Georgia Railroad bridge is adopted, the Power Company will provide a navigation channel between Mitchell Dam and Lock 12 at least 200 feet wide and having a bottom elevation not higher than 338 feet above the applicable datum plane established by the United States, and will convey to the United States free of cost such of its lands and right of way, and such right of passage through its

dams or other structures, and will permit such control of pools as may be required to complete such navigation facilities as are required by the adopted project.

(viii) Under Article 15 the licensee is required to pay annual charges to reimburse the United States for the costs of administration of the Act and for recompensing it for use, occupancy and enjoyment of public lands and reservations; to establish and maintain amortization reserves (Article 17) after the first twenty years of operation of the project under the license, such reserves to be held in the discretion of the Commission until the termination of the license or to be applied from time to time in reduction of the net investment.

(ix) The license further provides (Article 19) that the licensee should abide by such reasonable regulation of the service to be rendered to customers or consumers of power, and of rates and charges of payment therefor, as may from time to time be prescribed by any duly constituted agency of the state in which the service is rendered or the rate charged; and in case there did not exist in such state any such agency, or any agency to regulate the amount of securities to be issued by the Power Company, it was agreed as a condition of the license that jurisdiction should be conferred upon the Commission, upon the complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control over rates, regulations and security issues until such time as the state should have provided a commission or other authority for such regulation and control.

(x) The Power Company accepting on June 25, 1921 the license for the construction of the dam at Duncan's Riffle (now Mitchell Dam), built the dam and the power house

at a cost in excess of $5,000,000 and is now operating and maintaining the same under the provisions of the license issued by the Federal Power Commission and under the laws of the State of Alabama.

(f) (i) The Power Company on June 13, 1925, filed with the Alabama Public Service Commission a petition for a certificate of convenience and necessity for a hydro-electric power development at the Lock 18 site on the Coosa River near Wetumpka, Alabama, setting out that it proposed, among other things, to distribute to the public through its transmission system the power to be generated, and that it had filed with the Federal Power Commission an application for a license under the Federal Water Power Act for such development. The Alabama Commission on August 6, 1925, granted such petition (36 APSC Rept., 256) and issued such certificate, finding among other things that the construction of the dam and other works, and the transmission lines to connect the same with the system of the Power Company, was "reasonably necessary for the convenience of the consumers and the public * * *."

(ii) The Power Company had filed with the Federal Power Commission its application dated June 13, 1925 for a license for the project described therein and located at the Lock 18 site on the Coosa River, setting out as to the proposed use or market for the power to be developed that it planned to sell the same to the public through the distribution system of the Power Company and its associated companies; that applicant was at that time serving hydro-electric power to the cities and most of the principal towns in northern and central Alabama and was planning to furnish electric power to a number of cities and towns in South Alabama, then being served from isolated steam plants, and that it was contemplated that this development

would assist these and other towns where progress and development were being impeded for the lack of hydro-electric power, to secure the same.

(iii) The Commission on November 7, 1925 granted the Power Company's application, finding that the contemplated improvement was desirable and justified in the public interest for the purpose of improving or developing a waterway (the Coosa River) for the use or benefit of interstate and foreign commerce (6 Ann. Rept. Fed. Power Comm., p. 247).

(iv) The Commission issued the license (No. 618) to the Power Company for a period of fifty years from the date thereof, for the purpose of constructing, operating and maintaining certain project works at the Lock 18 site necessary or convenient for the development and improvement of navigation and for the development, transmission and utilization of power across, along, from or in the Coosa River, navigable waters of the United States.

(v) The license contained a provision (Article 14) requiring the Power Company to install such appliances as are necessary for furnishing power for the operation of navigation facilities, including lights and signals, whether constructed or installed by the licensee or by the United States; and to furnish free of cost to the United States power for the operation of such navigation facilities.

(vi) The license provided further (Article 15) that the operations of the licensee, so far as they affected the use, storage and discharge from storage of the water of the Coosa River, should at all times be controlled by such reasonable rules and regulations as the Secretary of War might prescribe in the interests of navigation and as the Federal Power Commission might prescribe in the interest

of flood control and of the fullest practicable utilization of the waters of the river for power purposes.

(vii) Whenever the United States should desire to construct, complete or improve navigation facilities at the dam (Article 16), the licensee should convey to the United States, free of cost, such of its lands and rights of way and such rights of passage through its dam or other structures, and permit such control of pools as might be required to complete such navigation facilities.

(viii) The license further provided (Article 18) that whenever the flow of the Alabama River at Montgomery was less than 6,000 cu. ft. per second, the licensee should, when directed so to do by the Secretary of War, release at such dam sufficient water to maintain a flow of 6,000 cu. ft. per second at Montgomery; provided that the licensee should not be required to release more than the normal, natural flow of the river at the dam or more than 5,000 cu. ft. per second.

(ix) The license provides for the payment of annual charges to reimburse the United States for the costs of the administration of the Act (Article 23), and for the conditional exercise by the Commission of jurisdiction over rates, regulations and security issues (Article 27).

(x) The Power Company completed the Lock 18 site (now Jordan Dam) in 1929 with a capacity of 144,000 h. p. at a cost in excess of $10,000,000 and is now operating and maintaining the same under the provisions of the license issued by the Federal Power Commission and under the laws of the State of Alabama.

(g) Under the provisions of 16 U. S. C., Sec. 807, upon the expiration of the fifty-year term of any license issued by the Federal Power Commission and upon not less than

two years' notice in writing to the licensee given by the Commission, the United States is authorized to take over, maintain and operate the licensed project, or shall have the right to take over on mutual agreement with the licensee, all property owned and held by the licensee then valuable and serviceable in the development, transmission and distribution of power and when is then dependent for its usefulness on the continuance of the license, upon the condition that before taking possession the United States

> "shall pay the net investment of the licensee in the project or projects taken, not to exceed the fair value of the property taken, plus such reasonable damages, if any, to property of the licensee valuable, serviceable, and dependent as above set forth but not taken, as may be caused by the severanee therefrom of property taken, and shall assume all contracts entered into by the licensee with the approval of the commission . . . . . ."

In the event the Commission and the licensee cannot agree upon the net investment in the projects so taken and the amount of such severance damages, these may be determined by proceedings in equity instituted by the United States.

It is further provided in such Section 807 that the United States or any state or municipality may have the right to take over, maintain and operate any licensed project at any time by condemnation upon the payment of just compensation.

Under the provisions of 16 U. S. C., Sec. 820 any license issued by the Federal Power Commission may be revoked for the violation of any of its terms or for any act of commission or omission in violation of the provisions of law or of any lawful regulation or order promulgated under the provisions of the Federal Water Power Act. In the event

a decree revoking the license is entered the court is empowered

> "to sell the whole or any part of the project or projects under license, to wind up the business of such licensee conducted in connection with such project or projects, to distribute the proceeds to the parties entitled to the same, and to make and enforce such further orders and decrees as equity and justice may require. At such sale or sales the vendee shall take the rights and privileges belonging to the licensee and shall perform the duties of such licensee and assume all outstanding obligations and liabilities of the licensee which the court may deem equitable in the premises; and at such sale or sales the United States may become a purchaser, but it shall not be required to pay a greater amount than it would be required to pay under the provisions of Section 807 of this chapter at the termination of the license . . . . . ."

(h) At the time of and since the issuance of the licenses for Mitchell and Jordan Dams the rates and service regulations of the Power Company have been prescribed and its security issues approved by the Alabama Public Service Commission, a duly constituted agency of Alabama, and at no time has the Federal Power Commission undertaken to establish any such rates or regulations or approve *any such issues*. The Power Company has likewise paid to the Federal Power Commission the annual charges fixed by it in each of such licenses to reimburse the United States for the cost of administration of the Federal Water Power Act, and has otherwise complied with all conditions and provisions of said several grants and licenses to this date.

(i) The Power Company, through the construction of Lay, Mitchell and Jordan Dams, has overcome a lift of 225 feet within a distance of 33 miles, over a continuous

stretch of the Coosa River, thus providing adjoining pools with a navigable depth in excess of 9 feet for a distance of 57 miles, and a continuing pool with a depth of 4 feet for an additional distance of 15 miles; resulting in possible continuous navigation over a 72-mile stretch of the Coosa River dependent on the construction by the government of locks in Lay, Mitchell and Jordan Dams.

The Power Company operates Martin Dam on the Tallapoosa River and, in accordance with requirements referred to above, the Power Company operates Jordan Dam on the Coosa River, so as to maintain a minimum flow of 6,000 cu. ft. per second at Montgomery. From the official records of the United States Government, it appears that the minimum flow of 2,150 second feet in the Alabama River at Montgomery occurred in 1904, resulting in 2.8 foot navigation. By increasing this flow to 6,000 second feet at Montgomery the navigable depth above the low water of 1904 is increased from 2.8 feet to 4.8 feet over bars, or 4.8 feet navigation, without further regulation.

It was recommended by the Chief of Engineers (H. D. No. 253, Vol. 6, 63rd Congress, 1st Session, 1913) that a plan be adopted for providing navigation on the Coosa River between Wetumpka and Gadsden providing for a total of 14 dams, 8 of such dams overcoming a lift of 110 feet to be navigation dams only and 6 of such dams overcoming a lift of 264 feet to be navigation and power dams. By its three developments on the Coosa River the Power Company without any cost to the United States has provided equivalent direct benefits to navigation over practically the same stretch of the river as that proposed to be improved.

It was estimated in the report referred to (H. D. No. 253) that in order to provide a minimum flow at Montgomery of 6,000 cu. ft. per second, it would be necessary

to provide a storage reservoir on the Tallapoosa River with a total capacity of 31.6 billion cu. ft., the estimated cost of which was $1,500,000. The Power Company, by constructing Martin Dam on the Tallapoosa River, has provided sixty-three billion cu. ft. of storage at a cost in excess of $9,000,000 for the dam and flooded lands only, not including any part of the investment made for the production of power or other necessary expenditures. By operating Martin Dam in conjunction with its plants on the Coosa River, the Power Company has provided a minimum flow of 6,000 cu. ft. per second at Montgomery at no cost to the United States.

The investment made by the Power Company on the basis outlined in H. D. 253 saved the United States Government many millions of dollars represented by the value of Lay, Mitchell, Martin and Jordan dams to navigation on the Coosa River and on the Alabama River at and below Montgomery.

(j) Certificates of Convenience and Necessity were granted by the Alabama Public Service Commission for all the foregoing plants and facilities and transmission lines which have been constructed since November 1, 1920, the effective date of the Act of the legislature of Alabama conferring such powers on the Commission.

(k) As a result of the construction by the Power Company of the plants and facilities described in this bill, the company had on its system during the year 1933, a total supply available to the public amounting to 659,000,000 kilowatt hours, or 48%, in excess of the market requirements.

(l) Power Company acquired its properties in good faith and at great cost and its bonds and stocks issued and approved in conformity with law were sold to and acquired

by the holders and owners thereof in good faith in reliance upon the Constitution and laws of the United States, and of the State of Alabama and the grants and licenses issued pursuant thereto as aforesaid.

(m) The Power Company acquired generating plants and distribution systems at Huntsville and Decatur in 1915 and since that time has extended its electric service in good faith and in due course in the northern part of Alabama, including the Tennessee Valley area, so that at the present time it provides such service over practically the entire area. Said Power Company operates in many other cities and towns in that section of Northern Alabama embraced within the Tennessee Valley under franchises granted by the several municipal corporations in full force and effect, except as herein averred.

The Power Company owns and operates electric distribution systems in the cities of Florence, Sheffield and Tuscumbia under agreements with the municipal authorities to serve the public for an indefinite time, the Power Company's definitive franchise in the first named city having expired during 1933 and in the two other cities in 1932.

## EXHIBIT NO. 13.

**Resolution Adopted at a Meeting Held in Sheffield, Alabama, August 13, 1934, by Representatives of Thirteen of Respondent Municipalities.**

1. As to Alabama Public Service Commission:

Whereas, the Tennessee Valley Authority has completed plans to distribute cheap electric energy to Sheffield, Tuscumbia, Florence, Russellville, Leighton, Cherokee, Hartselle, Moulton, Decatur, Red Bay, Courtland, Rogersville, Town Creek, Hillsboro and Austinville, Alabama, by the purchase of the transmission facilities in and connected with the above mentioned towns or municipalities, from the Alabama Power Company.

And Whereas, we, as individuals and representatives of the towns and cities above mentioned heartily indorse the work of the Tennessee Valley Authority in our respective communities, and pledge our greatest cooperation at any and all times to the Government Corporation to carry out its plans in the most successful manner possible, and likewise, we urge the people in other sections of the Tennessee Valley and adjacent areas to lend every possible help to the Tennessee Valley Authority.

And Whereas, the above municipalities and the citizens thereof have cooperated 100 percent in the past with the Tennessee Valley Authority, and these municipalities have signed contracts for cheap TVA power,

Therefore, this assembled body urges the Public Service Commission of Alabama and the Tennessee Valley Authority to hasten the consummation of the sale of the Alabama Power Company's facilities to the Tennessee Valley Authority and thus give the people of these counties the benefit not only of cheap electrical energy but an assured stable and profitable development in practically every field of industry, also, that the Alabama Public Service Commission is

hereby requested not to ask the Tennessee Valley Authority to file its rate schedule with it.

(2) As to boycotting coal and ice companies which have challenged the validity of the Tennessee Valley Authority program by recourse to the courts:

Whereas, certain coal companies and ice companies of the state of Alabama have instituted legal proceedings endeavoring to block, by legal technicalities, the great development in the Tennessee Valley now being accomplished by the Tennessee Valley Authority; and,

Whereas, the President of the United States has called upon the people of the United States to oppose the selfishness that brought the depression out of which the President is so courageously leading the people; and,

Whereas, the action of coal and ice companies in opposing the development of this section by the TVA is in direct opposition to the policy of the President of the United States, is in opposition to the interest of the great masses of people in this country.

Therefore, be it resolved, by the Mayors, City Officials and other representatives of municipalities involved in convention assembled at Sheffield, Alabama, that we condemn the coal and ice companies that have joined in the litigation against the Tennessee Valley Authority for their undemocratic, selfish and mercenary motives, and call upon them to support the President, withdraw their litigation, and join in this policy of development of the South; and,

Be it further resolved, that we call upon the people of the Tennessee Valley to patronize and support only such ice and coal companies that are willing to support the policy of the President of the United States in the development of this valley.

Filed September 13, 1934.

Geo. L. Sherrill,

Register in Chancery.

The State of Alabama, Limestone County. } In Circuit Court, in Equity

To Any Sheriff of the State of Alabama—Greeting:

You are hereby commanded to summon Electric Home and Farm Authority, for service upon their Agent, Mr. Neely, Colbert County, Alabama, to appear and answer, plead, or demur within thirty days from the service hereof, to a Bill of Complaint filed in said Circuit Court, in Equity, for said County and State George Ashwander, et als against Tennessee Valley Authority, et als.

Herein fail not. Due return make of this writ as the law directs.

Witness this 13th day of September, 1934.

W. Van Gilbert, Register.

I have executed the within by leaving a copy thereof with John L. Neely, Jr., Agent, Electric Home and Farm Authority, defendant named herein, on this the 24th day of September, 1934.

J. H. Blake, Sheriff.

Returned by the Sheriff and filed in office, this the 24th day of September, 1934.

W. Van Gilbert, Register.

The State of Alabama, Limestone County. } In Circuit Court, in Equity

To Any Sheriff of the State of Alabama—Greeting:

You are hereby commanded to summon Tennessee Valley Authority, for service upon their agent, Mr. Neely, Colbert County, Alabama, to appear and answer, plead, or demur,

within thirty days from the service hereof, to a Bill of Complaint filed in said Circuit Court, in Equity, for said County of said State George Ashwander, et als against Tennessee Valley Authority, et als.

Herein fail not. Due return make of this writ as the law directs.

Witness this 13th day of September, 1934.

W. Van Gilbert, Register.

I have executed the within by leaving a copy thereof with John L. Neely, Jr., agent, for Tennessee Valley Authority, defendant named herein, on this the 24th day of September, 1934.

J. H. Blake, Sheriff.

Returned by the Sheriff and filed in office, this the 24th day of September, 1934.

W. Van Gilbert, Register.

George Ashwander et als, Complainants, vs. Tennessee Valley Authority et als, Respondents—In the Circuit Court for the Eighth Judicial Circuit of Alabama. In Equity. No. 1708.

## NOTICE AND ORDER OF PUBLICATION

It appearing that on September 13, 1934, George Ashwander and others filed in this Court their bill of complaint against the following named respondents: Alabama Power Company and others, including Chemical Bank and Trust Company and Guaranty Trust Company of New York, and it further appearing that said Chemical Bank and Trust Company and Guaranty Trust Company of New York are

corporations of the State of New York and are not residents of the State of Alabama, and that process of law can not be served on either of said respondents within Alabama, it is, therefore

Ordered by the Register that each of the above named respondents shall, and they are hereby required to plead, answer or demur to said bill of complaint before the 27th day of October, 1934, as required by law; otherwise said bill of complaint shall be taken as in all things confessed by said respondents.

It is further Ordered that a copy hereof be published in the Limestone Democrat, a newspaper of general circulation in the County of Limestone, Alabama, and that within twenty days from the date hereof a copy of this notice be posted at the court house door of said County at Athens, Alabama, and a copy hereof be mailed within said period of twenty days to each of said non-resident respondents, whose addresses are stated as follows:

Chemical Bank and Trust Company, 165 Broadway, New York, N. Y.

Guaranty Trust Company of New York, 140 Broadway, New York, N. Y.

This 24th day of September, 1934.

W. Van Gilbert
As Register in Chancery of said Court.

**NOTICE OF PETITION AND BOND FOR REMOVAL**

To the above named plaintiffs and Cabaniss and Johnston, their attorneys of record, you and each of you will please take notice that on the 25 day of Sept., 1934, the above named respondents will file in the above designated Court, their petition and bond as required by law for the

removal of said cause from the above entitled Court to the District Court of the United States for the Northern District of Alabama, Northern Division, and also a bond in the sum of Five Hundred Dollars ($500.00), given on such removal according to law and the requirements of the statutes in such case made and provided, and copies of said bond and petition are herewith served, and upon the filing of said petition and bond, the respondents will present and call to the attention of said Circuit Court for the Eighth Judicial Circuit of Alabama the said petition and bond and move the said Court for an order of removal of said suit from said Court to said District Court of the United States for the Northern District of Alabama, Northern Division.

James Lawrence Fly
William C. Fitts, Jr.
Attorneys for Respondents,
Tennessee Valley Authority and
Electric Home and Farm Authority, Inc.

Service of copy of the above as well as a copy of the accompanying petition and bond for removal are acknowledged, without waiver or prejudice.

This September 24th, 1934.

Cabaniss and Johnston,
Attorneys for Complainants.

Filed Sept. 25, 1934, W. Van Gilbert, Register.

In the Circuit Court for the Eighth Judicial Circuit of Alabama

**PETITION FOR REMOVAL**

To the Judges of the Circuit Court in and for the Eighth Judicial Circuit of Alabama, In Equity:

Come Your Petitioners, appearing specially for the sole purpose of filing this petition, without submitting generally to the jurisdiction of the Court, and show unto the Court the following facts:

The Petitioner, Tennessee Valley Authority, one of the respondents in the above styled cause, is a body corporate created by an Act of Congress approved May 18, 1923, known as the Tennessee Valley Authority Act of 1933 (Public No. 17, 48 Stat. 58; Title 16, USCA, Section 831, et seq.).

The Petitioner, Electric Home and Farm Authority, Inc., one of the respondents in the above styled cause, is a corporation organized and existing under the laws of the State of Delaware.

The individual complainants named in the bill of complaint are residents of the State of Alabama; the complainant Tutwiler Investment Company is a corporation organized and existing under the laws of the State of Alabama, having its principal office in Jefferson County, Alabama.

The above named Petitioners are the only respondents in the above styled cause upon whom process has been served, and are the only respondents in said cause under the jurisdiction of this Court at the time of the filing of this petition.

The matter and amounts in controversy in the above styled cause exceed, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3000.00), as will more fully appear herein.

The above styled cause is a suit of a civil nature in equity arising under the Constitution and laws of the United States; more particularly under Article 1, Section 8 of the Constitution of the United States, the Fifth Amendment to the Constitution of the United States, the Act of Congress, approved May 18, 1933, known as "The Tennessee Valley Authority Act of 1933" (Public No. 17, 48 Stat. 58; Title 16 USCA 831 et seq.), the Act of Congress, approved June 16, 1933, known as "The National Industrial Recovery Act" (Public No. 67, 73rd Congress), and the Act of Congress, known as the Federal Water Power Act (41 Stat. 1063; 16 USCA, Sections 791 to 823).

It affirmatively appears from the original bill of complaint filed in this cause that the value of the interests, rights and contracts herein in controversy exceeds the sum of Three Thousand Dollars ($3000.00), exclusive of interest and costs, and that the following questions, arising under the Constitution and laws of the United States are directly involved and presented for decision in this suit:

(1) The constitutionality, interpretation and construction of the Tennessee Valley Authority Act herein above referred to.

(2) The construction and interpretation of the National Industrial Recovery Act herein above referred to.

(3) The construction and interpretation of the Federal Water Power Act herein above referred to.

(4) The legality of the various contracts and agreements described in the original bill of complaint, and alleged to have been executed under the authority of the Tennessee Valley Authority Act herein above referred to.

(5) The legality of the entire program of the respondent Tennessee Valley Authority under the Tennessee Valley Authority Act and the Constitution of the United States.

(6) The legality of the existence, activities and program of the respondent Electric Home and Farm Authority, Inc., under the National Industrial Recovery Act and the Constitution of the United States.

Your Petitioners offer herewith a good and sufficient cash bond, conditioned upon their entering in the District Court of the United States for the Northern District of Alabama, Northern-eastern Division, within thirty (30) days from the date of filing this petition, a copy of the record in this suit and upon the payment of all costs that may be awarded by said Court, if it shall hold that this suit was wrongfully or improperly removed thereto.

Petitioners Pray that this Honorable Court will proceed no further herein except to make the order of removal required by law and to accept the bond hereby offered and to cause the record herein to be removed into the said District Court of the United States in and for the Northern District of Alabama, Northern Division and they will ever pray.

Tennessee Valley Authority
By David E. Lilienthal
Electric Home and Farm Authority, Inc.
By David E. Lilienthal

State of Tennessee }
County of Knox }

Before me, the undersigned Authority in and for said County in said State, personally appeared David E. Lilienthal, known to me, who, being first duly sworn doth depose and say:

That he is a Director of the Petitioner, Tennessee Valley Authority, and, as such, he has knowledge of the facts stated in the above petition and is authorized to make this oath that the foregoing petition is correct to the best of his knowledge, except as to those matters stated therein upon information and belief and, as to those matters, he believes them to be correct.

David E. Lilienthal

Sworn to and subscribed before me this 21 day of September, 1934.

Seal
Jerome M. Allen
Notary Public
Knox County

Jerome M. Allen,
Notary Public.

My commission expires Jan. 13, 1935.

State of Tennessee }
County of Knox }

Before me, the undersigned Authority in and for said County in said State, personally appeared David E. Lilien-

thal, known to me, who, being first duly sworn doth depose and say:

That he is a Director of the Petitioner, Electric Home and Farm Authority, Inc., and, as such, he has knowledge of the facts stated in the above petition and is authorized to make this oath that the foregoing petition is correct to the best of his knowledge, except as to those matters stated therein upon information and belief and as to those matters he believes them to be correct.

David E. Lilienthal

Sworn to and subscribed before me this 21 day of September, 1934.

Seal

Jerome Allen
Notary Public

Jerome M. Allen,
Notary Public

My commission expires Jan. 13, 1935.

I, William C. Fitts Jr., one of the attorneys for the Petitioners, hereby certify that notice of the filing of this petition and bond has been served upon Cabaniss and Johnston, attorneys of record for the complainants.

William C. Fitts, Jr.

**BOND ON REMOVAL**

Know All Men By These Presents that we, Tennessee Valley Authority, a corporation created by an Act of Congress, and Electric Home and Farm Authority, Inc.,

a corporation organized and existing under the laws of the State of Delaware, are held and stand firmly bound unto George Ashwander, Wm. M. Browder, A. C. Garber, Joseph R. Cook, Jr., Bessie M. Gray, C. H. Gray, Clifford L. Lamar, Mary P. London, F. W. Murray, Eugene C. Morgan, Joseph A. Norman, C. L. Torbert, R. H. Woodrow, and Tutwiler Investment Company, a corporation organized and existing under the laws of the State of Alabama, in the penal sum of Five Hundred Dollars ($500.00) for the payment whereof well and duly to be made unto the above named parties, their heirs, representatives and assigns, we bind ourselves, our heirs, successors, representatives and assigns jointly and firmly by these presents. In order to further secure the performance of this obligation, there is deposited herewith the sum of Two Hundred and Fifty Dollars ($250.00).

Upon condition, nevertheless, that whereas the said Tennessee Valley Authority, and the said Electric Home and Farm Authority, Inc., have filed their petition in the Circuit Court for the Eighth Judicial Circuit of Alabama for the removal of a certain cause herein pending, wherein the said George Ashwander, Wm. M. Browder, A. C. Garber, Joseph R. Cook, Jr., Bessie M. Gray, C. H. Gray, Clifford L. Lamar, Mary P. London, F. W. Murray, Eugene C. Morgan, Joseph A. Norman, C. L. Torbert, R. H. Woodrow and Tutwiler Investment Company, a corporation organized and existing under the laws of the State of Alabama, are plaintiffs, and the said Tennessee Valley Authority and Electric Home and Farm Authority, Inc., are defendants, to the District Court of the United States in and for the Northern District of Alabama, Northeastern Division.

Now, if the said Tennessee Valley Authority and Electric Home and Farm Authority, Inc., shall enter in the said District Court of the United States within thirty (30) days

from the date of filing the said petition for removal, a copy of the record in said suit, and shall pay all costs that may be awarded by said District Court of the United States if said Court shall hold that said suit was wrongfully and improperly removed thereto, then this obligation shall be void, and the security deposited herewith by the obligors shall be forthwith returned to them; otherwise it shall remain in full force and effect.

In Witness Whereof, we, the said Tennessee Valley Authority and Electric Home and Farm Authority have hereunto caused this instrument to be signed and sealed by our duly authorized officers and attested under the hand and seal of our respective secretaries.

Tennessee Valley Authority
By David E. Lilienthal
Electric Home and Farm Authority, Inc.
By David E. Lilienthal

Attest:
Charles E. Hoffman
Secretary (Ass't.) (Seal)

Seal
Tennessee Valley
Authority
Attest:
Seal Harcourt A. Morgan,
Secretary. (Seal)
Electric Home and
Farm Authority.

Approved this 25th day of September, 1934.

James E. Horton,
Circuit Judge.

Filed Sept. 25, 1934
W. Van Gilbert, Register.

## ORDER FOR REMOVAL.

The respondents, Tennessee Valley Authority, and Electric Home and Farm Authority, Inc., having within the time provided by law, filed their petition for removal of this cause to the District Court of the United States for the Northern District of Alabama, Northeastern Division, and having at the same time offered their bond in the sum of Five Hundred Dollars ($500.00) pursuant to statute, and it appearing from the record that said respondents are the only respondents in said cause upon whom process has been served; now, therefore, this court does hereby accept and approve said bond and grant said petition, and does order that this cause be removed for trial to the next District Court of the United States for the Northern District of Alabama, Northeastern Division, and that all proceedings in this Court be stayed.

This September 25, 1934.

James E. Horton,
Circuit Judge.

Filed September 25, 1934.
W. Van Gilbert, Register.

The State of Alabama, Limestone County. } Circuit Court, Eighth Judicial Circuit of Alabama, In Equity.

I, W. Van Gilbert, Register of the Circuit Court of Eighth Judicial Circuit of Alabama, in Equity, do hereby certify that the foregoing pages numbered from one to one hundred twenty-five, both inclusive, contain a full, true and correct copy of the Original Bill, Order of Publication, Summons, Petition for Removal, Notice, Decree removing cause to Federal Court and Bond for Removal, in the cause

of George Ashwander, Wm. M. Browder, A. C. Garber, Joseph R. Cook, Jr., Bessie M. Gray, C. H. Gray, Clifford L. Lamar, Mary P. London, F. W. Murray, Eugene C. Morgan, Joseph A. Norman, C. L. Torbert, R. H. Woodrow, Tutwiler Investment Company, a Corporation, Complainants vs. Tennessee Valley Authority et als., Respondents, all of which appears of record of this Court, and all of which I hereby certify to the District Court of the United States for the Northeastern Division of the Northern District of Alabama.

I further certify that the costs accrued in this cause, to date, amount to the sum of $192.70; said cost bill being attached hereto.

Witness my hand and the seal of this the 5th day of October, 1934.

W. Van Gilbert
W. Van Gilbert,
(Seal) Register of the Circuit Court, Eighth Judicial Circuit Court of Alabama, In Equity.

## MOTION TO QUASH SERVICE OF SUBPOENA ON DEFENDANT ELECTRIC HOME AND FARM AUTHORITY, INC.

Filed November 8th, 1934,
W. S. Lovell, Clerk.

In the United States District Court
For the Northeastern Division of the Northern District of Alabama.

George Ashwander, Wm. M. Browder, A. C. Garber, Joseph R. Cook, Jr., Bessie M. Gray, C. H. Gray, Clifford L. Lamar, Mary P. London, F. W. Murray, Eugene C. Morgan, Joseph A. Norman, C. L. Torbert, R. H. Woodrow, Tutwiler Investment Company, a Corporation,

Plaintiffs,

vs.

Tennessee Valley Authority, Electric Home and Farm Authority, Inc., et als.,

Defendants.

In Equity
No.....

Now comes Electric Home and Farm Authority, Inc., one of the defendants in the above styled cause, appearing specially for the sole purpose of filing this motion without submitting generally to the jurisdiction of the Court, and by leave of Court first had and obtained, moves the Court to vacate and quash the attempted service of the subpoena herein, and to dismiss this case as to it for want of jurisdiction over the person of said Electric Home and Farm Authority, Inc., for the reason that said Electric

Home and Farm Authority, Inc., is a foreign corporation, organized and existing under and by virtue of the laws of the State of Delaware, and is not doing any business in the State of Alabama, and was not found within said State of Alabama, and is not amenable to service in said State of Alabama, and has not waived due service of process by voluntary appearance or otherwise; and the said defendant prays that the Court will enter an order vacating and quashing the attempted service of said subpoena and dismissing this case as to said defendant for want of jurisdiction over it.

James Lawrence Fly
William C. Fitts, Jr.,
Attorneys for Defendant
Electric Home and Farm Authority, Inc.

In the United States District Court
For the Northeastern Division of the Northern District of Alabama

George Ashwander, Wm. M. Browder, A. C. Garber, Joseph R. Cook, Jr., Bessie M. Gray, C. H. Gray, Clifford L. Lamar, Mary P. London, F. W. Murray, Eugene C. Morgan, Joseph A. Norman, C. L. Torbert, R. H. Woodrow, Tutwiler Investment Company, a Corporation,

Plaintiffs,

vs.

Tennessee Valley Authority, Electric Home and Farm Authority, Inc., et als.,

Defendants.

In Equity No.....

## AFFIDAVIT OF G. D. MUNGER ON MOTION TO QUASH SERVICE OF SUBPOENA.

I am the commercial manager of the Electric Home and Farm Authority, Inc., and as such am in actual charge of and control over the operations and business of that corporation. The Electric Home and Farm Authority, Inc. was organized under the authority of and pursuant to an Executive Order of December 19, 1934, a copy of which order is attached hereto as Exhibit "A" and is hereby made a part hereof as if fully set out herein. In pursuance to the Executive Order, the corporation was organized under the laws of the State of Delaware, with its principal office at No. 100 West 10th Street, in the City of Wilmington, County of New Castle, Delaware. A copy of the certificate of incorporation is attached hereto as Ex-

hibit "B," and is hereby made a part hereof as if fully set out herein.

The Electric Home and Farm Authority, Inc., maintains no office within the State of Alabama, and neither owns nor rents any property of any character within said State with the exception of the interests in certain electrical appliances as will appear herein. The Electric Home and Farm Authority, Inc. has only one employee in the State of Alabama. His duties are to contact dealers, municipalities and other interested parties in the State. He answers the questions and inquiries of dealers relative to the proper method of filling out contracts, rendering statements, etc. He has no power or authority to enter into any contracts binding upon the corporation, or to transact any business for and on behalf of the corporation, except as above stated. The method by which the corporation purchases installment contracts from dealers operating in Alabama is as follows: A dealer makes application on a form known as "Retailers Application and Repurchase Agreement," a copy of which form is attached hereto as Exhibit "C" and is hereby made a part hereof as if fully set out herein. When this application is received, it is referred to the credit department. The application is made to the office in Chattanooga, Tennessee, and if passed upon in that office, the credit department analyzes the statement and determines whether the applicant is a proper financial risk. After the statement receives the approval of the credit department, an investigation is made by the office at Chattanooga to determine whether or not the applicant is generally regarded as being capable of meeting his obligations. If the result of this investigation is favorable, the dealer and the Alabama Power Company, which is the utility operating in the territory, are notified that the application has been accepted. The

utility is also notified of the amount of paper that the Authority will purchase from this dealer. When a dealer operating under this plan makes a sale of an approved electrical appliance on the credit basis and desires to submit the customer paper to the Authority, he submits a form of chattel mortgage. This form so in use is attached hereto as Exhibit "D" and is hereby made a part hereof as if fully set out herein. If the contract has been properly prepared and executed, the dealer submits the same to the Alabama Power Company for approval and payment. The Alabama Power Company then examines the contract and if said contract has been properly prepared and executed and they consider the individual purchaser a proper credit risk, the Alabama Power Company purchases the customer paper and in turn submits this paper to the Authority. The contract is sent to the office of the Authority in Chattanooga, Tennessee. In that office the contract is checked as to form and calculation of amounts. If these matters are found to be in order, the contract is then submitted to the credit department, and if it is approved by that department, the purchase is approved. The contract is then submitted to the disbursement officer who prepares a check for the cash price of the appliance less the down payment. This check is made payable to the Alabama Power Company and is delivered to that Company in return for the customer paper. The Authority pays to the Alabama Power Company a booking charge of One ($1.00) Dollar per contract for each contract entered on the books of the Power Company. There is attached hereto as Exhibit "E" a copy of the contract of May 21, 1934 between the Electric Home and Farm Authority, Inc. and the Alabama Power Company, which sets out in detail the manner in which the customer paper is handled by the Power

Company. Said Exhibit is hereby made a part hereof as if fully set out herein.

The collection procedure is as follows: When the Alabama Power Company renders its bill for electric power, it also bills the purchaser of an electrical appliance for the monthly installment due on the contract. The Power Company remits this installment payment to the Authority, sending their check and a schedule of the collections made. The Authority pays to the Power Company twelve and one-half (.12½) cents per month per contract for their service in acting as a collection agent.

In these transactions, the contract for the purchase of the customer paper is not made final within the State of Alabama since all of the contracts must be finally approved in the office of the Authority at Chattanooga, Tennessee.

In the case of the City of Athens, the paper is handled in the same manner as outlined above, with reference to the Alabama Power Co.

G. D. Munger

State of Tennessee }
County of Hamilton }

Before me, the undersigned authority in and for said County, in said State, personally appeared G. D. Munger, who, being by me first duly sworn, did state on oath that he signed the foregoing affidavit as commercial manager of the Electric Home and Farm Authority, Inc., that he has knowledge of the facts stated therein, and that the same are true and correct.

Witness my hand and seal of office this 4th day of November, 1934.

H. H. Clark,
Notary Public.

(Seal)

My Commission Expires October 13th, 1937.

## EXHIBIT "A."

### Executive Order Authorizing the Formation of a Corporation to Be Known as Electric Home and Farm Authority, Inc.

Whereas the Congress of the United States has in the National Industrial Recovery Act, approved June 16, 1933 (Public, No. 67, 73d Cong.), declared it to be the "policy of Congress * * * to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, * * * to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production * * *, to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry * * *," and

Whereas, in order to effectuate such policy the President is "authorized to establish such agencies * * * as he may find necessary * * *," and

Whereas, in order, effectively and efficiently, to carry out said policy of the National Industrial Recovery Act, it is expedient and essential that a corporation be organized having the powers and functions of a mortgage loan company and such other powers and functions as may be necessary to accomplish the purposes of said Act;

Now, Therefore, under and by virtue of the authority vested in me by the National Industrial Recovery Act of June 16, 1933, it is hereby ordered that an agency, to-wit, a corporation, under the laws of the State of Delaware, be created, said corporation to be named the Electric Home and Farm Authority, Inc.

**Exhibit "A"**—Continued.

The governing body of said corporation shall consist of a Board of Directors composed of three (3) members, and the following persons, who have been invited and have given their consent to serve, shall be elected by the incorporators as such directors: Arthur E. Morgan, Director and Chairman, Tennessee Valley Authority; Harcourt A. Morgan, Director, Tennessee Valley Authority; David E. Lilienthal, Director and General Counsel, Tennessee Valley Authority.

The office and principal place of business of said corporation outside of the State of Delaware shall be at such place in any of the Tennessee Valley states as the Board of Directors shall select and determine, and offices may be established in such places as said Board of Directors shall select and determine.

The capital stock of said corporation shall consist of ten thousand (10,000) shares of the par value of One Hundred ($100.00) dollars each.

The persons above named are hereby authorized and directed to cause said corporation to be formed, with such articles or certificate of incorporation, and by-laws, as shall be deemed requisite and necessary, and to define the methods by which said corporation shall conduct its business.

The persons above named are hereby authorized and directed to subscribe for all of said capital stock for the use and benefit of the United States. There is hereby set aside for the purpose of subscribing to the capital stock in said corporation the sum of One Million ($1,000,000.00) dollars out of the appropriation of $3,300,000,000 authorized by Section 220 of the National Industrial Recovery Act and made by the Fourth Deficiency Act, fiscal year 1933, approved June 16, 1933 (Public, No. 77, 73d Cong.)

**Exhibit "A"**—Continued.

It is hereby further ordered that any outstanding stock standing in the name of the United States shall be voted by the directors of the Tennessee Valley Authority, jointly, or by such person or persons as the said directors of the Tennessee Valley Authority shall appoint as their joint agent or agents for that purpose.

The Board of Directors (other than the initial Board of Directors) shall be elected, and any vacancies thereon shall be filled by the directors of the Tennessee Valley Authority, jointly, subject to the approval of the President.

The Board of Directors may, without regard to the provisions of the civil service laws or the Classification Act of 1923, as amended, appoint and fix the compensation and prescribe the duties, authorities, responsibilities, and tenure of such officers and employees, and make such expenditures (including expenditures for personal services, and rent at the seat of the Government and elsewhere, for law books and books of reference, and for paper, binding, and printing) as may be necessary to carry into effect the provisions of this order. The Board of Directors may also, with the consent of any board, commission, independent establishment, or executive department of the Government, including any field service thereof, avail itself of the services of the officers, employees, and the facilities thereof and, with the consent of the State or municipality concerned, may utilize such State and local officers and employees as it may deem necessary.

The White House
December 19, 1935

Franklin D. Roosevelt

## EXHIBIT "B"

### Certificate of Incorporation of Electric Home and Farm Authority, Inc.

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the General Corporation Law of the State of Delaware, being Chapter 65 of the Revised Code of 1915, and the acts amendatory thereof and supplemental thereto, do hereby certify as follows:

**First:** The name of the Corporation shall be Electric Home and Farm Authority, Inc.

**Second:** The principal office of the Corporation in the State of Delaware is to be located at No. 100 West Tenth Street, in the City of Wilmington, County of New Castle. The name of its resident agent shall be The Corporation Trust Company, No. 100 West Tenth Street, Wilmington, Delaware.

**Third:** The nature of the business of the Corporation and the objects or purposes proposed to be transacted, promoted and carried on by it, are as follows:

A—To advance the general economic welfare of the nation by developing and fostering the increased use of electrical power through the reduction of the cost thereof to the consumer and through the reduction of the cost and price of electrical equipment and appliances; to aid in the distribution of electrical appliances and equipment by financing the purchase thereof through the lending and advancing of money, extending of credit and guaranteeing of obligations of individuals, firms, corporations and others, upon the security of mortgages or other liens upon or

**Exhibit "B"**—Continued

claims against electrical appliances and equipment, and in general to carry on in connection with such financing a chattel mortgage-loan business; to cooperate with any Federal agency or branch of the Federal Government or with any of the several States, or subdivisions or agencies of such States, or with cooperative or other organizations, or with private corporations or associations, and to make such studies, experiments or demonstrations as may be necessary and suitable to advance and foster an orderly and proper physical, economic and social development in any of the several States by means of the use of electricity or electrical power; to make such surveys and general plans for the use of electricity and electrical appliances and equipment as may be useful to Congress and to the several States in guiding and controlling the extent, sequence, and nature of development which may be equitably and economically advanced through the expenditure of public funds or through the guidance or control of public authority; to perform any and all functions, and exercise any and all powers which may be duly delegated to it under and pursuant to the National Industrial Recovery Act, approved June 16, 1933, and any amendment or amendments hereafter made to said Act.

B—To manufacture, buy, sell, deal in, and to engage in, conduct and carry on the business of manufacturing, buying, selling and dealing in electrical appliances and equipment and in goods, wares and merchandise of every class and description necessary or useful for the operations of the Corporation.

C—To lend or advance money to, extend financial assistance to, accept bills of exchange from, endorse the notes

**Exhibit "B"**—Continued

and guarantee the obligations of, individuals, firms, corporations, and/or others, with or without collateral security of any kind whatsoever, and to buy, discount, sell, rediscount, pledge, hypothecate and otherwise deal in, notes, warehouse receipts, pledges, bills of lading, freight receipts, trust receipts, open accounts, mortgages, conditional sales contracts and other similar evidences of debt and to loan money and to take notes, open accounts and other similar evidences of debt as collateral security therefor.

D—To borrow money, and to make and issue notes, bonds, debentures, obligations and evidences of indebtedness of all kinds, whether secured by mortgage, pledge or otherwise, without limit as to amount, and to secure the same by mortgage, pledge or otherwise; to constitute itself trustee of any property for the purpose of securing its obligations or for any other purpose; and generally to make and perform agreements and contracts of every kind and description.

E—To improve, manage, develop, sell, assign, transfer, lease, mortgage, pledge or otherwise dispose of or turn to account or deal with all or any part of the property of the Corporation and from time to time to vary any investment or employment of capital of the Corporation.

F—To apply for, obtain, register, purchase, lease or otherwise to acquire and to hold, own, use, develop, operate and introduce and to sell, assign, grant licenses or territorial rights in respect to, or otherwise to turn to account or dispose of, any copyrights, trade marks, trade names, brands, labels, patent rights, letters patent of the United States or of any other country or government, inventions,

**Exhibit "B"**—Continued

improvements and processes, whether used in connection with or secured under letters patent or otherwise.

G—To the same extent as natural persons might or could do, to purchase or otherwise acquire, and to hold, own, maintain, work, develop, sell, lease, exchange, hire, convey, mortgage, or otherwise dispose of and deal in, lands, leaseholds, and any interest, estate and rights in real property, and any personal or mixed property, and any franchises, rights, licenses or privileges necessary, convenient or appropriate for any of the purposes herein expressed.

H—To acquire by purchase, subscription or otherwise, and to hold for investment or otherwise, and to use, sell, assign, transfer, mortgage, pledge, or otherwise deal with or dispose of stock, bonds, or any other obligations or securities of any person, firm, association, trust, or corporation; to merge or consolidate with any corporation in such manner as may be permitted by law, to aid in any manner any corporation whose stock, bonds or other obligations are held or in any manner guaranteed by the Corporation, or in which the Corporation is in any way interested; and to do any other acts or things for the preservation, protection, improvement or enhancement of the value of any stock, bonds or other obligations, or to do any acts or things designed for any such purpose; and while owner of any such stock, bonds or other securities or obligations to exercise all the rights, powers and privileges of ownership thereof, and to exercise any and all voting powers thereof; to guarantee the payment of dividends upon any stock, and the principal or interest or both, of any bonds or other obligations and the performance of any contracts.

I—To do all and everything necessary, suitable and

**Exhibit "B"**—Continued

proper for the accomplishment of any of the purposes or the attainment of any of the objects or the furtherance of any of the powers herein set forth, either alone or in association with other corporations, firms or individuals, and to do every other act or acts, thing or things incidental or appurtenant to or growing out of or connected with the aforesaid business or powers or any part or parts thereof provided that the same be not inconsistent with the laws under which the Corporation is organized.

J—The business or purpose of the Corporation is from time to time to do any one or more of the acts and things hereinabove set forth, and it shall have power to conduct and carry on business or any part thereof in this State, other States, the District of Columbia, the territories and colonies of the United States, and in foreign countries, and to have one or more offices out of this State, and to exercise any or all of its corporate powers and rights out of this State, and to hold, purchase, mortgage and convey real and personal property out of this State.

K—The enumeration herein of the objects and purposes of this Corporation shall be construed as powers as well as objects and purposes and shall not be deemed to exclude by inference any powers, objects or purposes which this Corporation is empowered to exercise, whether expressly by force of the laws of the State of Delaware now or hereafter in effect or impliedly by the reasonable construction of said laws.

**Fourth**: The total number of shares of stock which the Corporation shall have authority to issue is Ten Thousand (10,000), and the par value of each such share is One Hundred ($100.00) Dollars.

**Exhibit "B"**—Continued

This Corporation is formed pursuant to and in accordance with an Executive Order of the President of the United States dated December 19, 1933, Number 6514. All of the capital stock of the Corporation is to be subscribed for by the incorporators for the use and benefit of the United States, and is to be issued and held in the name of the United States. All the rights and privileges of stockholders, including voting rights and privileges, are to be exercised on behalf of the United States by the Directors of the Tennessee Valley Authority, a corporation organized and existing under the Tennessee Valley Authority Act of 1933, jointly or by such person or persons as the said Directors of the Tennessee Valley Authority shall appoint as their joint agent or agents. The election or appointment of directors of the Corporation shall be subject to the approval of the President of the United States.

**Fifth**: The minimum amount of capital with which the Corporation will commence business is One Thousand ($1,000.00) Dollars.

**Sixth**: The name and place of residence of each of the incorporators is as follows:

| Name | Residence |
|---|---|
| Arthur E. Morgan | Knoxville, Tennessee |
| Harcourt A. Morgan | Knoxville, Tennessee |
| David E. Lilienthal | Knoxville, Tennessee |

**Seventh**: The Corporation is to exist for seven (7) years from the date of incorporation.

**Eighth**: The private property of the stockholders shall

**Exhibit "B"—Continued**

not be subject to the payment of corporate debts to any extent whatsoever.

**Ninth:** The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation.

A—The number of directors of the Corporation shall be three (3) and directors need not be stockholders of the Corporation. The election of directors need not be by ballot.

B—The directors shall have the power, without the assent or vote of the stockholders, to make and alter by-laws of the Corporation; to fix and vary the amount to be reserved as working capital; to authorize and cause to be executed mortgages and liens upon all the property of the Corporation, or any part thereof; to determine the use and disposition of any surplus or net profits over and above the capital stock paid in, and in their discretion the directors may use and apply any such surplus or accumulated profits in purchasing or acquiring the bonds or other obligations or shares of capital stock of the Corporation, to such extent and in such manner and upon such terms as the directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold unless such shares shall have been retired for the purpose of decreasing the Corporation's capital stock as provided by law.

C—The directors shall have the power, with the consent in writing of the holders of the voting stock issued and outstanding, or upon the affirmative vote of the holders of the stock issued and outstanding having voting power, to sell, lease, or exchange all of its property and assets, including its good will and its corporate franchises, upon

**Exhibit "B"**—Continued

such terms and conditions as the board of directors deem expedient and for the best interests of the Corporation.

D—In addition to the powers and authorities hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation; subject, nevertheless, to the provisions of the statutes of Delaware, of this Certificate, and of any by-laws from time to time made by the stockholders; provided, however, that no by-law so made shall invalidate any prior act of the directors which would have been valid if such by-law had not been made.

**Tenth**: Both stockholders and directors shall have power, if the by-laws so provide, to hold their meetings, and to have one or more offices within or without the State of Delaware, and to keep the books of this Corporation (subject to the provisions of the statutes), outside of the State of Delaware at such places as may be from time to time designated by the board of directors.

**Eleventh**: The corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

In Witness Whereof, we have hereunto set our hands and seals on the dates appearing opposite our respective names:

(Signed)

| | | |
|---|---|---|
| January 13th, 1934 | Arthur E. Morgan, | (L. S.) |
| January 13th, 1934 | Harcourt A. Morgan | (L. S.) |
| January 6th, 1934 | David E. Lilienthal | (L. S.) |

**Exhibit "B"**—Continued

State of Tennessee }
County of Knox }

Be It Remembered that on this 13th day of January, A. D. 1934, personally came before me J. M. Hickey, a Notary Public in and for the County and State aforesaid, Arthur E. Morgan and Harcourt A. Morgan, two of the parties to the foregoing certificate of incorporation, known to me personally to be such, and severally acknowledged the said certificate to be the act and deed of the signers respectively, and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

J. M. Hickey
Notary Public
State of Tennessee,
County of Knox

My commission expires:
April 12, 1936

J. M. Hickey
Notary Public
Knox County, Tennessee

State of New York }
County of New York } ss.

Be It Remembered that on this 6th day of January, A. D. 1934, personally came before me, A. Catherine Handel, a Notary Public in and for the County and State aforesaid, David E. Lilienthal, one of the parties to the foregoing Certificate of Incorporation, known to me personally to be such, and acknowledged the said Certificate to be his act and deed, and that the facts therein stated are truly set forth.

**Exhibit "B"**—Continued

Given under my hand and seal of office the day and year aforesaid.

A. Catherine Handel
Notary Public
State of New York,
County of New York

My Commission expires:
March 30, 1934
A. Catherine Handel
Notary Public
New York County
Notary Public
New York County No. 448
New York Register's No.

State of Delaware
Office of Secretary of State

I, Charles H. Grantland, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "Electric Home and Farm Authority, Inc.", as received and filed in this office the seventeenth day of January, A. D. 1934, at 1 o'clock P. M.

In Testimony Whereof, I have hereunto set my hand and official seal, at Dover, this seventeenth day of January in the year of our Lord one thousand nine hundred and thirty-four.

(Sgd) Charles H. Grantland
Secretary of State

EHFA Dealer Form No. 1

# EXHIBIT "C"




## RETAILER'S APPLICATION
and
## REPURCHASE AGREEMENT

To Electric Home and Farm Authority, Inc. Chattanooga, Tenn.

Gentlemen:

Whereas certain public utility companies and manufacturers of electrical appliances and the Electric Home and Farm Authority, Inc., are cooperating in a plan to increase the use of electric power at a decreased cost by reducing the rates for consumption of electric power and the prices of electrical appliances, and the cost of financing the purchase of such appliances; and whereas the undersigned desire to cooperate and participate in such plan, we hereby make application in accordance with the terms hereof. The following is a statement of assets and liabilities of the undersigned as of the close of business ..... 19..

| ASSETS | | | LIABILITIES | | |
|---|---|---|---|---|---|
| Cash on Hand and in Banks | $ | | Owing for Mdse. (Where no note has been given) | $ | |
| Accounts Receivable Good (Not Assigned) | | | Owing for Mdse. (Where note has been given) | | |
| Notes and Contracts Receivable. Good (Not Assigned) | | | Borrowed from Banks (With Security) | | |
| Merchandise (At Current Cost Price) | | | Borrowed from Banks (Without Security) | | |
| Reserve due from Finance Co | | | Borrowed from Others (With Security) | | |
| Real Estate | | | Borrowed from Others (Without Security) | | |
| Machinery, Fixtures and Furniture | | | Other Debts | | |
| Other Assets | | | Mortgages or Liens on Real Estate | | |
| | | | Capital Stock | | |
| Total Assets | | | Surplus and Undivided Profits | | |
| Unpaid Balance of Contracts Receivable Sold | | | TOTAL (Should Equal total Assets) | | |
| | | | Contracts Payable to Finance Co | | |

IT IS NECESSARY THAT THE FOLLOWING QUESTIONS BE ANSWERED FULLY:

Sales for period from ..... To ..... $ ..... Expense same period $ ..... Net Profit same period $ .....

Are any of the above Assets pledged or assigned as collateral, or are any of the above Liabilities secured by collateral? .....

If so, give amounts and all details .....

| | Finance Company | Notes or Accounts | Amount |
|---|---|---|---|
| List names of Finance Companies with whom you have dealt and show amount of accounts or notes discounted with each outstanding at present. | | | $ |
| | | | $ |
| | | | $ |

Individual Venture ..... Partnership ..... Corporation ..... If Incorporated, what State? .....

When Incorporated? ..... Authorized Capital $ ..... Paid in Cash $ ..... Paid Otherwise $ .....

How Paid? ..... Total Capital $ .....

How much Insurance were you carrying at date of statement on merchandise? $ .....

On Building, Machinery, etc.? $ .....

Name of Bank ..... Address ..... Town ..... State .....

Name of Bank ..... Address ..... Town ..... State .....

Trade Reference:

Name ..... Address ..... Town ..... State .....

Name ..... Address ..... Town ..... State .....

Name ..... Address ..... Town ..... State .....

Name of Local Credit Bureau ..... Do you use their services? .....

Other Types of Appliances handled .....

| Description and Location of Real Estate Listed on Financial Statement | Title Held in Name of | Cost Plus Improvements | Present Market Value | Mortgage |
|---|---|---|---|---|
| | | $ | $ | $ |
| | | $ | $ | $ |
| | | $ | $ | $ |

## Exhibit "C"—Continued

Names of Officers and Directors (or Partners) (with stockholding or partnership interests of each):

| Full name | Address | Official Title, if any | Interest in Business | Individual Worth Outside Business |
|---|---|---|---|---|
| | | | $ | $ |
| | | | $ | $ |
| | | | $ | $ |
| | | | $ | $ |

The above statement is made for the purpose of inducing you and/or Trustee (as defined on the reverse hereof) to purchase or otherwise acquire notes, drafts, acceptances, conditional sale contracts, lease agreements, chattel mortgages, accounts receivable and other instruments and obligations, all of which shall be herein referred to as "Customer Paper," arising out of the sale of goods, wares and merchandise by us, which statement shall be considered as continuing substantially correct, unless we should notify you and/or Trustee to act upon and use it as a basis of credit information, to extend credit to the undersigned through purchasing or otherwise acquiring any such Customer Paper from time to time. We agree that all Customer Paper offered you and/or Trustee for purchase or acquisition hereunder and purchase thereof shall be subject to all the terms, provisions, and conditions of the agreement appearing on the reverse side hereof, which is hereby made a part hereof as fully as though set forth at length herein.

Accepted: Electric Home and Farm Authority, Inc.

By.....

Dated.....

Signature.....(SEAL)
Firm Name (If Corporation, two officers sign below)

Accepted: Electric Home and Farm Authority, Inc., Trustee under a trust deed executed in May, 1934, to secure an issue of notes to aggregate not in excess of Ten Million ($10,000,000) Dollars.

By.....

Dated.....

By.....(SEAL)
(Officer, Partner, Owner)

By.....(SEAL)
(Officer, Partner, Owner)

The special terms used herein shall have the following definitions:

"Your insignia" means the insignia of Electric Home and Farm Authority, Inc., which is a design embodied in Design Patent No. 92156 issued by the United States Patent Office. "Approved Appliance" means an electrical appliance bearing, with your permission, your insignia and which has been approved by you as to quality and price, and for the sale of which we have been placed on your list of approved retailers. "Customer Paper" means chattel mortgages, conditional sale contracts, leases, promissory notes, or other forms of obligation accepted by us on the sale at retail to ultimate users of approved appliances. "You" means Electric Home and Farm Authority, Inc., in its individual corporate capacity. "Trustee" means Electric Home and Farm Authority, Inc., as trustee under a trust deed executed in May, 1934, to secure an issue of notes

**Exhibit "C"**—Continued

to aggregate not in excess of Ten Million ($10,000,000) Dollars.

In consideration of your and/or Trustee's purchasing from us from time to time such customer paper as is acceptable to you, and in consideration of your permitting the use by us, subject to the conditions hereinafter set forth, of your insignia, which permission shall be evidenced by your acceptance of this agreement, we, for ourselves, successors, and assigns, hereby agree as follows:

1. We understand that in order to sell approved appliances and offer you and/or Trustee customer paper, we must be on your list of retailers approved to sell the particular approved appliance in question, and that you may, in your sole discretion and without notice to us, withdraw our name from any such approved list at any time. Withdrawal of approval shall not relieve us of any obligation with respect to customer paper purchased by you and/or Trustee prior to such withdrawal of approval.

2. We agree to make all sales of approved appliances, other than cash sales, on rates, terms and conditions approved by you and to accept customer paper only on your forms. We agree not to sell any customer paper which has not first been offered to you and/or Trustee, and if we offer you and/or Trustee any customer paper which is accepted by you and/or Trustee, we shall thereafter offer you and/or Trustee for purchase, within thirty (30) days after the sale of the appliance for which the paper was received, upon your regular terms, all customer paper which we obtain in the regular course of business until we shall have given you thirty (30) days written notice of our intention to discontinue such practice. Your and/or Trustee's failure

**Exhibit "C"**—Continued

to purchase any customer paper offered by us shall not relieve us of any obligation hereunder.

3. If we desire to do so or if required by you, we shall file or record customer paper at our cost prior to sale to you and/or Trustee.

4. In case of default in payment of any installment due on any customer paper (or paper offered to you and/or Trustee as customer paper) purchased by you and/or Trustee from us, or in case of any violation of any other obligation under such customer paper, or if you and/or Trustee shall, within thirty (30) days after you and/or Trustee shall have purchased any customer paper, deem such customer paper unsatisfactory, we shall repurchase from you and/or Trustee all such customer paper within ten (10) days after written demand, without tender of paper being required. If we fail to repurchase such customer paper within ten (10) days after demand or cease to do business as a going concern, or if a petition in bankruptcy or for a receiver is filed by or against us, we shall immediately upon demand, without tender of paper being required, repurchase any or all paper sold by us to you and/or Trustee, and upon our failure to repurchase any such paper, you and/or Trustee may upon ten (10) days written notice to us sell any or all such paper at public or private sale, and we shall be liable for any deficiency established at such sale. You and/or Trustee may yourself purchase such paper at any public sale held in pursuance hereto.

5. The price at which we shall repurchase customer paper from you and/or Trustee shall be the unpaid balance of the face amount of said customer paper less any unearned por-

**Exhibit "C"**—Continued

tion of the finance charges, to be determined as provided in your chart of finance charges.

6. We shall not, except with your permission, make any repossessions or collections in connection with the sale of any appliance securing paper sold to you and/or Trustee until we have repurchased such paper. It is agreed that title to all merchandise repossessed by us shall remain in Trustee until the paper covering same has been satisfied or has been repurchased by us, as provided in this agreement; and until you or Trustee has received such payment, you shall have the right, without notice or demand, to take possession of any appliances repossessed by us, and we consent to your entry upon our premises to take possession of same. We shall forward to Trustee all remittances and to you or to persons designated by you promptly all communications and inquiries which we may receive in connection with any such customer paper prior to the repurchase of such customer paper by us. We agree to cooperate fully with you and/or Trustee in making collections when requested to do so by you.

7. Immediately upon the purchase by you and/or Trustee of any customer paper hereunder, we will make upon our books suitable and proper entries disclosing the sale of such paper to you and/or Trustee. You may at all times inspect our correspondence, books and records for the ascertainment of our financial condition, or to obtain any information relating to the sales of approved appliances or paper secured thereby. We will submit to you not later than the tenth day of each month, on forms supplied by you, such information relative to the sale of appliances during the preceding month as you may deem necessary for the promo-

**Exhibit "C"**—Continued

tion of the market for approved appliances, such information to be treated as confidential.

8. We shall be permitted, in connection with the sale of approved appliances, to use your insignia, subject to the following rules prescribed by you and such other rules as may be hereafter prescribed by you:

(a) We shall not place the insignia on any appliance or other article of any nature, and shall use the insignia only in connection with the advertising and selling of approved appliances upon which the insignia has been placed, with your consent, by the manufacturers of such approved appliances.

(b) Whenever reproduced, the insignia, inclusive of the slogan, "Electricity For All", shall conform in all particulars with sample copies thereof which will be furnished by you upon request, except that it may be reproduced on a larger or smaller scale than said sample, and except further that if it is impractical to reproduce the color combination of the sample, the insignia may be reproduced in such color or colors as may be authorized by you. No other slogan or insignia shall be in any way physically associated with your insignia.

(c) In advertising, selling, or inducing the sale of approved appliances, whether orally, in writing, or otherwise, it shall be clearly indicated, by the use of the insignia, where practicable, that such approved appliances have been approved by you.

(d) You may at any time compel the cessation of any form of advertising or sales campaign in connection with such insignia or any appliance bearing such insignia which you deem unfair, undesirable or detrimental.

**Exhibit "C"**—Continued

(e) We shall assist in preventing misuse of the insignia by manufacturers, distributors, other retailers, or any other persons.

9. We hereby appoint each and every one of your duly elected or appointed officers, with power of substitution, as our attorney in fact to execute assignments of and to endorse our name upon any and all customer paper from which such endorsement or assignment may be omitted, and upon any and all notes, checks, acceptances, or other forms of exchange received in payment on such customer paper, and to do all things we might do in connection with the collection or enforcing payment of any customer paper sold hereunder or that may be necessary to carry out the intent of this agreement.

Remittances to you and/or Trustee on any of our obligations whatsoever in form other than cash are made at our risk and shall constitute payment only when honored and when bank drafts or other clearance items in payment thereof are likewise honored.

We hereby waive notice of non-payment, protest and demand of any customer paper sold by us to you and/or Trustee or any other paper delivered by us to you and/or Trustee in connection with our obligations hereunder, and consent that you may, without notice to us and without releasing us from any obligation as endorser, guarantor, or under this contract, grant extensions of time, renew, compromise, adjust, alter, or release any rights under the customer paper or security devices in connection therewith, or may repossess the property covered by, or vary the terms of, any customer's conditional sale contract, chattel mortgage, or other obligation. Your and/or Trustee's failure to exercise any right hereunder or to file or record any

**Exhibit "C"—Continued**

customer's conditional sale contract, chattel mortgage or other obligation, whether or not required by law, shall not operate as a waiver of that or any right, and your and/or Trustee's waiver of any default shall not operate as a waiver of successive defaults, nor affect in any way any of our obligations hereunder, but all rights hereunder shall continue notwithstanding one or more waivers. All rights and remedies hereunder are cumulative and not alternative.

10. We agree to service, without cost to the purchaser, any and all approved appliances sold by us, for such period of time as said appliances are guaranteed by the manufacturer thereof.

11. We agree to keep strictly confidential any credit information on proposed purchasers which may be furnished to us by you or any of your agents, or any electric utility cooperating in your program, and we further agree to indemnify you or any such agent or utility against any liability incurred as a result of furnishing to us such credit information.

12. We warrant all paper offered to you and/or Trustee to be bona fide deferred payment paper received by us in payment for approved appliances (new, unless otherwise specified) sold or leased and delivered by us to ultimate users in the usual course of business, and that said paper is not past due and is not subject to any dispute, contra-account, set-off, or counterclaim, and that such paper truly evidences the agreement between us and the purchaser and that all the facts stated therein are true.

We further warrant that title to all property covered by paper offered to you and/or Trustee was at the time of sale vested in us free of all liens and encumbrances; that the

**Exhibit "C"—Continued**

said property is as represented to the purchasers by us; and that the statements made by the purchasers on the statement form submitted with the paper are true to the best of our knowledge and belief.

We further warrant that the purchaser is of legal contract age. All representations and warranties covered in this contract are made for the purpose of inducing you and/or Trustee to purchase customer paper.

13. At any time we may be obligated to you and/or Trustee in any sum, you and/or Trustee may withhold and apply to the payment of such obligation any amounts due by you and/or Trustee to us.

14. This agreement shall cover sales made by us from the date it is accepted by you and/or Trustee, as provided below, until all our obligations with reference to such sales are fully satisfied. Any of the parties hereto may at any time by written notice cancel this agreement as to future transactions, such notice to become effective upon receipt by the other parties. Such cancellation shall not relieve us of any obligation with respect to paper purchased by you and/or Trustee prior thereto.

15. This contract shall inure to the benefit of and bind the personal representatives, successors, and assigns of all the parties hereto, to the same extent as the original parties. If any paper purchased by you and/or Trustee from us is sold, pledged, hypothecated, transferred, mortgaged or assigned to another, it shall not affect our obligations hereunder, and all our promises and agreements herein shall extend to and include such and any subsequent purchasers, pledgees, transferees, mortgagees and assignees thereof. We hereby agree that any such party may in its

**Exhibit "C"**—Continued

own name or otherwise, as permitted by law, enforce any of our obligations hereunder in the same manner as though such obligations ran directly to such party originally.

16. We, by signing on the reverse hereof, offer to enter into this contract with you and Trustee, and unless such offer is first withdrawn, acceptance by you and Trustee as indicated by your signatures at the places provided on the reverse hereof shall cause this contract to become effective. We waive notice of acceptance. We agree that Trustee is under no obligation to us hereunder but that any of your obligations may be performed by Trustee (or any successor of Trustee) at the option of you and Trustee (or any successor of Trustee). We further agree that all of our obligations hereunder, however expressed and to whomsoever stated to run, shall be deemed to run severally to Trustee (or any successor of Trustee) and to you, and any of said obligations may, at any time and from time to time, be enforced severally, in whole or in part, by suit or otherwise, by Trustee (or any successor of Trustee) or by you; provided, that satisfaction to one will constitute satisfaction to both.

## EXHIBIT "D"

EHFA Form PM 1 This form to be used only in the sale of electric appliance(s) bearing the insignia of Electric Home and Farm Authority, Inc., upon terms and conditions approved by Electric Home and Farm Authority, Inc. The Electric Home and Farm Authority, Inc., as such or as Trustee, is not a party to following contract and assumes no obligation thereunder.

### Chattel Mortgage

No.....

The undersigned seller, hereinafter called mortgagee, hereby sells, and the undersigned purchaser, hereinafter called mortgagor, hereby purchases, for the total time selling price set forth below, subject to the terms and conditions hereinafter set forth, the chattel(s) described below, delivery and acceptance of which, in good condition, are hereby acknowledged by mortgagor, to be kept at:

.....

(Number and street) (City or Town) (County and State)

| Quantity | Manufacturer | Description of Article | Model No. | Serial No. Body or Cabinet | Serial No. Motor or Unit | Cash Delivered Price |
|---|---|---|---|---|---|---|
| ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... |

Terms:

Mortgagor shall pay to mortgagee, or mortgagee's order or mortgagee's assignee, the time balance, at the office of..... (hereinafter called Utility), in....., in.....

(City) (State)

Time Balance... $.....
Plus
Down Payment.. $.....
Total Time Price $.....

**Exhibit "D"—Continued**

monthly installments of $.....each; the first installment shall be due on the same date as the next monthly service bill from Utility to mortgagor is due, provided such date is more than twelve days from the date of this contract; if such date is twelve days or less from the date of this contract, then the first installment shall be due on the same date as the second next monthly service bill from Utility to mortgagor is due; and one installment shall be due each consecutive month thereafter on the same date of the month as the monthly service bill from Utility to mortgagor is due in that month; if for any reason mortgagor ceases to be a customer for electricity of Utility, each monthly installment thereafter shall be due on the same date of each successive month as the date the last monthly service bill from Utility to mortgagor was due, or at the option of mortgagee, the total unpaid balance outstanding shall become immediately due and payable.

Mortgagor shall pay interest after maturity on any amounts past due, at the highest lawful contract rate, and if any amount due hereunder is not paid when due and is collected by law or is placed in the hands of an attorney for collection, mortgagor shall pay 20% of the amount due hereunder, as attorney's fee, or if prohibited, the amount prescribed by law.

In the event mortgagor fails for a period of ten days to pay any installment due, mortgagee may at his option declare the entire balance of the purchase price due at once.

To secure the payment of the unpaid purchase price as set out above, mortgagor hereby mortgages to mortgagee the above described chattel(s) upon the condition that if mortgagor pays all said sums promptly at or before maturity and performs all other covenants herein contained,

**Exhibit "D"—Continued**

then this mortgage shall be null and void. Time is of the essence hereof.

Mortgagor warrants accuracy of credit information given herewith, consents to investigation of his credit standing and agrees that all information obtained may be divulged by mortgagee without liability.

This contract shall inure to the benefit of, and bind, the heirs, executors, administrators, successors and assigns of mortgagor and mortgagee.

The conditions set forth on the reverse side hereof are hereby made a part of this contract.

All Warranties and Agreements, Express or Implied, Are Contained Herein and Shall Not Be Limited or Qualified Without Written Endorsement on the Face (This Side) Hereof.

Executed and delivered this .....day of....., 193..

.....
Signature of Mortgagor

..... Company

By: .....
Signature of Mortgagee

Witnesses: .....

.....

Acknowledgment for Individual.

State of.....
County of.....

Before me, the undersigned attesting officer, personally appeared the within named .....
to me personally known to be the person described in the

**Exhibit "D"—Continued.**

foregoing instrument, who acknowledged that, being informed of the contents thereof, he signed and delivered the same as his free act and deed on the day and year therein mentioned.

Given under my hand and seal this ..... day of....., 193...

My commission expires.....

.....

(Notarial Seal) Notary Public

Assignment

....., 193..

(City or Town) (State) (Date)

For ~~Value~~ Received, Undersigned does hereby sell, assign and transfer all its right, title and interest in and to the foregoing contract and the chattel(s) described therein, to Electric Home and Farm Authority, Inc., Trustee, its successors or assigns, Electric Home and Farm Authority, Inc., Trustee, or its agent, being the company which pays Undersigned the consideration for the assignment, with power to such Assignee to take legal proceedings in the name of Undersigned or Assignee. All the warranties, terms and provisions of the dealer contract between Undersigned and Assignee are made a part hereof by reference, and Assignee relies upon the same in making this purchase.

Undersigned hereby warrants that the contents of the foregoing instrument have been fully explained to the other party thereto.

.....(Seal)

(Corporate, Firm, or Trade Name of Retailer)

By:.....(Seal)

(Owner, Officer, or Firm Member)

**Exhibit "D"—Continued.**

(Reverse Side)

The following terms and conditions are a part of the mortgage set forth on the reverse side hereof:

1. The chattel(s) may be installed, in any manner appropriate to the proper use thereof, upon the premises of mortgagor at the address stated herein, but shall not become a part of the realty no matter how annexed thereto.

2. Mortgagor shall keep the chattel(s) free of all liens, taxes and encumbrances and will not remove nor attempt to remove nor permit the removal of the chattel(s) without the written consent of mortgagee, nor shall mortgagor transfer any interest in this mortgage or said chattel(s), nor misuse nor secrete said chattel(s).

3. No loss, injury or destruction of the chattel(s) shall release the mortgagor from his obligation hereunder.

4. Upon default, for a period of ten (10) days, in payment of any installment or breach of any covenant expressed herein, or whenever mortgagee shall deem the debt insecure, or the chattel(s) in danger of misuse or confiscation, or if any execution or writ be levied upon the property of mortgagor, or a receiver thereof appointed, or if a petition in bankruptcy or for a receiver be filed by or against mortgagor, the mortgage shall be in default and the full amount owing hereunder shall immediately be due and payable and mortgagee may enter upon the premises where chattel(s) may be, with or without legal process, take possession of the chattel(s) and any accessories thereto and remove the same to such place as he may deem safe and convenient.

5. In the event of repossession, all payments made by the mortgagor prior to repossession shall be retained by the mortgagee, and the mortgagor hereby appoints mortgagee (or its assigns) his agent and attorney in fact to sell the

**Exhibit "D"**—Continued.

chattel(s) at public sale or at any time or place at private sale without demand for performance, without notice and with or without having such property at the place of sale. The mortgagee may bid at any public sale. Out of the proceeds of any sale there shall first be paid the expense of seizure, holding, removal, repairing and sale, including 20% of the amount due hereunder, as attorney's fees, or if prohibited, the amount prescribed by law; the balance thereof shall be applied to the amount due hereunder; and thereafter the surplus, if any, shall be paid to the mortgagor. If the proceeds of any sale are insufficient to pay the foregoing amounts, the mortgagor shall pay any deficiency. Mortgagor hereby waives any claims, demands or damages arising out of the repossession, retention, reparation or sale of the chattel as aforesaid.

6. Waiver of any breach or default shall not constitute a waiver of any future breach or default.

7. Acceptance by mortgagee of a partial payment of any installment or amount due hereunder or the failure of mortgagee promptly to exercise any of the remedies herein provided, shall not waive the strict performance of the conditions of this contract nor prevent the mortgagee from immediately pursuing any or all of said remedies as to all articles covered thereby.

8. This contract may be assigned by the mortgagee. No transfer, renewal, extension or assignment shall release any obligation of mortgagor hereunder. If this contract is assigned, it shall be free from any defense, counter-claim or cross complaints by mortgagor.

9. This mortgage, if it covers more than one chattel, is not divisible by the mortgagor in any manner as to such chattels or the purchase price therefor. Any payments

**Exhibit "D"—Continued.**

made on the contract shall be applied to the purchase price of each article in proportion to the purchase price of each article stated herein, but each chattel shall remain as full security for the entire unpaid balance due until the full amount due under the contract is paid; except that, where mortgagee or his assignee exercises the permission granted to him in the following paragraph to transfer to one person the balance due on the unpaid purchase price of one chattel and to another the balance due on the unpaid purchase price of the other, payments thereafter made by or collections thereafter made from mortgagor on the unpaid purchase price of any article covered thereby shall apply on such article alone.

10. If two or more chattels are purchased hereunder, mortgagor agrees that the right to the unpaid purchase price of each such chattel computed in accordance with Section 9 above, together with any right to the particular chattel as security for such unpaid purchase price thereof, may be assigned to separate parties without thereby affecting the rights hereunder to the unpaid purchase price of any chattel covered by this contract. Such partial assignees may join in an action against mortgagor or may maintain separate actions to enforce their respective interests. For the purpose of any such action, any duplicate original of this contract or a photostatic copy of any original or duplicate original may be introduced in evidence as an original.

11. Remittances in other form than cash are made at the mortgagor's risk and shall constitute payment only when honored and when bank drafts or other clearance items in payment thereof are likewise honored. Mortgagor agrees to pay all exchange charges on payments.

12. Mortgagor waives for himself and family the provisions of all homestead and other property exemption laws.

**Exhibit "D"—Continued.**

13. Mortgagor hereby authorizes any attorney at law to appear for him in any court of record in the United States, waive the issue and service of process and confess judgment against the mortgagor for any amount due hereunder in favor of mortgagee, together with 20% of the amount due hereunder, as attorneys fees, or if prohibited, the amount prescribed by law.

14. Any provision of this contract prohibited by the laws of any State shall, as to such State, be ineffective to the extent of such prohibition only without invalidating any other provision of the contract in that State.

Confidential Credit Information

Name..... Nationality.....
White ( ) Negro ( ) Age..... Sex.....
Residence.....How long there?.....
Previous address.....
If purchaser is a married woman, the information requested should refer to her husband:
Occupation..... Employer.....
Business Address..... Business Phone.....
Length of Service with above Employer.....
Present Monthly Income $.... Number of dependents .....
Name of Bank where account is carried:
..... Branch .....
Location of Real Estate owned.....
Value $..... Liens $.....
In whose name is Title.....
Business Reference: Name..... Address.....
Business Reference: Name..... Address.....

[Note. There was filed as part of this Exhibit "D" a duplicate of the above, which was printed on blue paper. For brevity this duplicate copy is omitted from this record.]

## EXHIBIT "E"

Agreement, made and entered into this ..... day of .....193..., between Electric Home and Farm Authority, Inc., a corporation organized and existing under the laws of the State of Delaware, in its individual corporate capacity, hereinafter called "Authority"; and Electric Home and Farm Authority, Inc., as Trustee under a trust deed executed in May, 1934, to secure an issue of notes to aggregate not in excess of Ten Million ($10,000,000) Dollars, hereinafter called "Trustee"; and ..... Company, a corporation organized and existing under the laws of the State of ....., hereinafter called "Utility";

Witnesseth:

Whereas, Authority has conducted negotiations with manufacturers, dealers, and other electric utility companies, and has as a result thereof developed a plan for the distribution and sale of standard quality electric appliances at lower prices and on easier terms than have heretofore been generally available; and

Whereas, Authority, as a part of said plan has secured the agreement of certain manufacturers to place on the market electric appliances of approved quality at prices which will make such appliances available to a large class of users who have heretofore been unable or unwilling to purchase such appliances; and

Whereas, Authority proposes to finance the sales of such appliances at low finance charges and over long periods of time, with the result that the market for such appliances will be further extended to include a new and wide class of users who have heretofore been unable to purchase such appliances; and

**Exhibit "E"**—Continued.

Whereas, Authority proposes to cooperate with manufacturers, dealers, and electric utility companies who are cooperating in the plan by advertising, demonstration, or such other means as Authority deems advisable, to promote the widespread purchase and use of domestic electric appliances, and thereby to make possible an increased use of electricity in the home; and

Whereas, the plan provides for the billing of purchasers of said appliances along with the regular monthly service bills of Utilities cooperating in the plan and is therefore limited to customers of such cooperating Utilities; and

Whereas, Utility has signified its willingness to cooperate in the plan, to the end that Utility and its customers may share in the benefits of the plan; and

Whereas, it is expected there will be a substantial increase in the purchase and use of domestic electric appliances by customers of Utility as a result of Utility's cooperating in the plan, and that the use of Utility's electric current will be increased accordingly, to the mutual advantage of all parties involved,

Now, Therefore, in consideration of the mutual covenants herein contained, the parties hereto for themselves, their successors and assigns, covenant and agree, as follows:

**Article 1**: The special terms used herein shall have the following definitions:

"Approved Appliance" shall mean an electrical appliance bearing, with permission of Authority, Authority's insignia, which is a design embodied in Design Patent No. 92156 issued by the United States Patent Office. "Manufacturer" shall mean the manufacturer of an Approved

**Exhibit "E"**—Continued.

Appliance. "Retailer" shall mean a retailer who is approved by Authority to sell Approved Appliances. "Purchaser" shall mean an ultimate user to whom a Retailer sells at retail an Approved Appliance. "Customer Paper" shall mean chattel mortgages, conditional sale contracts, leases, promissory notes, or other forms of obligation given by purchasers and accepted by Retailers on the sale of Approved Appliances.

**Article 2**: Utility will, in accordance with the terms and conditions herein contained, and as agent for Authority and/or Trustee, receive Customer Paper from Retailers, advance to Retailers the purchase price of such Customer Paper, and collect installments due on Customer Paper.

**Article 3**: Utility will receive Customer Paper from Retailers and advance to Retailers the purchase price thereof only upon the following conditions:

(a) The Purchaser to whom the Approved Appliance is sold must be using electric service of Utility; and the Approved Appliance must be sold for installation in a residence for domestic use;

(b) The Customer Paper must be on forms prescribed and furnished by Authority, completely and properly filled out, and properly assigned by Retailer on the assignment form on the Customer Paper;

(c) The total amount of Customer Paper received from any Retailer and arising out of the sale of any Manufacturer's Approved Appliances must be within the amount in which the Retailer is approved in writing by Authority as to such Manufacturer. (Authority will notify Utility of the amount in which each Retailer is approved as to each Manufacturer. Any Retailer may be removed from

**Exhibit "E"**—Continued.

any approved list at any time, or the amount in which any Retailer is approved for any Manufacturer may be changed. Utility will be notified of any such removal or change);

(d) Utility shall not, except with written consent of Authority, advance the purchase price of any Customer Paper to any Retailer if such Retailer did not, during the thirty (30) days preceding the offer of such Customer Paper, tender to Utility any other Customer Paper, except that this provision shall not apply to Customer Paper arising from the sale of any Manufacturer's Approved Appliances within the first thirty (30) days after the Retailer is approved as to such Manufacturer;

(e) Retailers who have sold any Customer Paper to Authority or Trustee are required to offer for sale to Authority and/or Trustee all Customer Paper thereafter received by them until Retailer shall have given to Authority thirty (30) days written notice of his intention to discontinue such practice. Utility shall not advance the purchase price of any Customer Paper to any Retailer who Utility knows or believes is not complying with this requirement;

(f) Utility shall not, without written consent of Authority, advance the purchase price of any Customer Paper which is not presented by a Retailer within thirty (30) days after sale of the Approved Appliance for which it was received;

(g) Utility shall not receive or advance the purchase price of any Customer Paper if the net cash sale price at which the Approved Appliance was sold to the Purchaser was in excess of the Manufacturer's suggested retail price approved by Authority;

**Exhibit "E"**—Continued.

(h) Utility shall not receive or advance the purchase price of any Customer Paper unless the finance charges thereon are in accordance with Authority's then prevailing chart of finance charges and unless the following requirements are observed:

The maximum period for which credit may be extended shall be three (3) years where one Approved Appliance is sold, and four (4) years if two or more Approved Appliances are sold to the same Purchaser at the same time under the same contract. There shall be minimum equal monthly payments of at least Two ($2.00) Dollars on each contract, and the down payment shall be not less than the monthly installment;

(i) Utility shall not receive any Customer Paper from or advance the purchase price thereof to any Retailer who is known by Utility to be in default under, or violating any of his obligations to, Authority and/or Trustee, except that after demand has been made on Retailer to repurchase any Customer Paper, Utility may in its discretion receive Customer Paper offered by Retailer within the ten (10) days following the demand, and shall set-off the new Customer Paper against the amount owing by Retailer. Utility shall in no case receive any Customer Paper from a retailer who has failed to meet within ten (10) days after demand his obligation to repurchase any Customer Paper;

(j) If Utility shall have notified Authority, or should have notified Authority, as provided in Article 14 hereof, of any reason why it deems immediate action against any Retailer advisable or necessary to protect Authority's or Trustee's interests, Utility shall not thereafter receive any Customer Paper from, or advance the purchase price thereof to, such Retailer;

**Exhibit "E"**—Continued.

(k) If Customer Paper is offered by Retailer which was received in payment for an approved range or water-heater which Utility refuses to install, or if by reason of any credit information Utility may have on the purchaser or for any other reason Utility deems that any Customer Paper offered by Retailer may be unsatisfactory to Authority and/or Trustee, Utility shall not pay the Retailer therefor, but shall forward to Authority the Customer Paper offered, together with a statement of the reasons why Utility deems it unsatisfactory, and shall inform the Retailer that Utility is unable to pass upon the acceptability of such paper and that such paper has been sent to Authority for acceptance or rejection.

**Article 4:** Utility will receive from Purchasers who are using electric service of Utility monthly installments on Customer Paper and will pursue the following procedure with reference to collection of such installments:

(a) Utility will send to Purchaser, along with the monthly service bill of Utility, notice of each installment due. The installment will be considered delinquent if not paid within ten (10) days from its due date;

(b) If installment is not paid, Utility will send a delinquent notice to Purchaser within ten (10) days after the installment becomes delinquent;

(c) If installment is still unpaid at the time for mailing the next monthly service bill, Utility will send to Purchaser a second delinquent notice with that monthly service bill;

(d) Utility will assign a collector to contact Purchaser between thirty (30) and forty (40) days after delinquency;

(e) If the installment is unpaid forty (40) days after de-

**Exhibit "E"**—Continued.

linquency, Utility will, within five (5) days thereafter, notify Retailer of the delinquency and send Authority a copy of this notice;

(f) If the installment is unpaid fifty (50) days after delinquency, Utility will, within five (5) days thereafter, send demand notice to the Retailer to repurchase the Customer Paper according to his repurchase agreement, and send Manufacturer a copy of this demand notice;

(g) If, sixty (60) days after Purchaser's delinquency, Retailer has not repurchased the Customer Paper and Purchaser has not paid all installments then due, Utility will, within five (5) days thereafter, notify Authority of such default on the part of Retailer.

**Article 5**: Utility shall ascertain within thirty (30) days after the purchase of each item of Customer Paper, whether or not the Approved Appliance for which the Customer Paper purports to have been received in payment was actually delivered to the purchaser; and shall immediately upon ascertaining that Customer Paper has been purchased for which no Approved Appliance was delivered notify Authority accordingly and shall not thereafter receive any Customer Paper from, or advance the purchase price thereof, to the Retailer involved.

**Article 6**: At the request of any Retailer, Utility shall furnish to such Retailer any credit information Utility may have on a proposed Purchaser, and Authority shall indemnify Utility against any liability incurred by Utility as a result thereof.

**Article 7**: Utility shall, except as otherwise provided in sub-section (k) of Article 3 hereof, immediately upon receipt of Customer Paper, advance to Retailer the amount

**Exhibit "E"**—Continued.

of Retailer's cash sale price for the Approved Appliance, less the down payment thereon and any installment due on or before the date of acceptance. Utility shall send to Authority each business day a statement of the amount of Customer Paper received and paid for by Authority and/or Trustee; which statement shall be on a form mutually agreed upon, and which shall be accompanied by a duplicate original copy of each item of Customer Paper bought. Utility shall retain another duplicate original copy which shall be returned to the Purchaser through the Retailer when the contract is paid up and closed out. Authority will, upon receipt of each such statement, forward to Utility the amount paid by Utility for Customer Paper. Utility shall, at the time it receives each item of Customer Paper, place thereon numbers indicating: (1) The Retailer; (2) the serial number of the contract as to the Retailer; and (3) the serial number of the contract as to the Utility. These numbers shall be placed on all contracts received by Utility, whether the purchase price is advanced by Utility or the Customer Paper is forwarded to Authority for acceptance or rejection.

**Article 8:** Utility shall each business day forward to Trustee all collections on Customer Paper, together with all sums received from Retailers, accompanied by a statement on a form, mutually agreed upon by the parties, of collections and sums received from Retailers. Any employee of Utility is hereby authorized to indorse to Utility, for deposit only, any check payable to Authority or Trustee which is received by Utility in payment on Customer Paper.

**Article 9:** Utility shall submit to Authority each business day a statement showing the total outstanding bal-

**Exhibit "E"**—Continued.

ance on all Customer Paper purchased by Utility for Authority and/or Trustee, on which Utility is still making, or attempting to make, collections.

**Article 10:** It is understood and agreed that title to all Customer Paper, from the instant the same comes into Utility's possession, shall be vested in Trustee; and Utility shall immediately, upon receipt of same, place on all Customer Paper a stamp which will be furnished by Authority, indicating that the Customer Paper is the property of the Trustee. Utility shall at all times keep all Customer Paper and accounts in connection therewith entirely separate and distinct from all other papers, accounts, and records of Utility. Title to all collections on Customer Paper shall, from the instant same comes into possession of Utility, be vested in Trustee. Utility shall secure each day from each of its branch offices a statement of collections made. Utility agrees that when any collections are deposited in a branch office depository, the first sums thereafter transferred to the central office depository, up to the amount of that branch office's collections which have not at the time been received by the Trustee, shall be deemed to be such collections. Any loss of collections shall be borne by Utility, until collections are received by Trustee. Utility shall secure the extension of protection, under bonds covering Utility's employees who handle collections, to protect Authority and Trustee and to cover moneys belonging to Authority and/or Trustee.

**Article 11:** Utility's books, accounts, correspondence, and other records pertaining to Customer Paper and collections, shall at all times be open for inspection by Authority, and by the Comptroller-General of the United States. Utility

**Exhibit "E"**—Continued.

shall furnish to Authority and to the Comptroller-General of the United States, upon request, any reasonable information requested by either and pertaining to Customer Paper, or to collections, or to any other matter in connection with Customer Paper or collections thereof.

**Article 12:** Utility shall be obligated to furnish to Retailers all information available to it with reference to the operation of Authority's plan of financing Customer Paper; shall maintain a supply of Purchaser contract forms, rate charts, pamphlets, (all of which will be furnished by Authority), and distribute the same to Retailers; and shall immediately forward to Authority all communications and inquiries from either Retailers or Purchasers, which Utility is unable to answer or which for any reason require the attention of Authority.

**Article 13:** Utility shall immediately notify Authority and Retailer concerned:

(a) If Utility's electric service is for any reason discontinued to any Purchaser who is thirty (30) days or more in default in payment of any installment due on Customer Paper;

(b) If to Utility's knowledge, any Purchaser moves off of Utility's lines, or moves and leaves behind an Approved Appliance on which unpaid Customer Paper is held by Authority or Trustee;

(c) If, to Utility's knowledge, any Approved Appliance securing Customer Paper which is thirty (30) days or more in default is removed from the place originally installed, or is injured, or if for any other reason Utility deems that Authority's or Trustee's rights in such Approved Appliance or the security thereof are jeopardized;

**Exhibit "E"**—Continued.

(d) If, to Utility's knowledge, any Purchaser is in default in any obligation under his contract, or becomes insolvent, or if a petition in bankruptcy or for a receiver is filed by or against the Purchaser, or if for any other reason Utility deems action against the Purchaser advisable or necessary to protect Authority's or Trustee's interests. This provision does not apply to a default of a Purchaser in payment of installments due, the procedure in such case being as provided in Article 4 hereof.

The notice to Authority shall contain a statement of Utility's opinion as to whether or not the Retailer involved will be able to and willing to repurchase the Customer Paper involved if so required; and Authority shall indemnify Utility against any liability incurred by Utility as a result of furnishing this information to Authority.

**Article 14:** If, to Utility's knowledge or belief, any Retailer is in default under, or is violating any obligation of, his contract with Authority and Trustee, or ceases to do business as a going concern, or becomes insolvent, or if a petition in bankruptcy or for a receiver is filed by or against any Retailer, or if for any other reason Utility deems action against any Retailer necessary or advisable to protect Authority's or Trustee's interests, Utility shall immediately notify Authority.

**Article 15:** Utility shall, at its own expense and without cost to the Purchaser, install inside wiring for approved ranges and water heaters and inside piping for water heaters for Customers on Utility's lines, unless Utility does not approve the credit of the Purchaser, or does not believe Purchaser's residence is sufficiently permanent to justify the expense of such installation, or unless the cost

**Exhibit "E"**—Continued.

of installation is more than Thirty-five ($35.00) Dollars and the Purchaser is unwilling to pay the excess. Utility shall obtain consent of Authority before refusing installation for any other reason.

**Article 16:** If any Purchaser whose Customer Paper is being collected by Utility hereunder transfers his Approved Appliance or Appliances from one point on Utility's lines to another point on Utility's lines, Utility will continue to make collections from Purchaser in accordance with the regular collection procedure set out herein. If electric service of any Purchaser whose Customer Paper is being collected by Utility is temporarily cut off for any reason other than non-payment of Purchaser's electric service bill, Utility will continue to make collections from Purchaser in accordance with the regular collection procedure set out herein, and any notice which would have been sent to Purchaser with Purchaser's monthly service bill shall be sent to Purchaser on approximately the same day of each month on which the last regular monthly service bill was sent to Purchaser.

**Article 17:** This contract does not authorize Utility to act as a Retailer under Authority's plan, but Utility may act as a Retailer upon signing Authority's standard form of contract for Retailers.

**Article 18:** Authority will pay to Utility the sum of One ($1.00) Dollar as booking charge for each item of Customer Paper purchased by Authority or Trustee through Utility, each contract being considered as one item. This sum will be paid to Utility at the same time Authority reimburses to Utility the sum expended by Utility in paying Retailer for the Customer Paper. In addition, Authority will pay to Utility, at the end of each month, as collection and

**Exhibit "E"—Continued.**

billing charge, the sum of twelve and one-half (12½c) cents on each contract on which Utility has sent to the Purchaser during that month a first notice of installment due. Payment of the above sums will constitute payment in full for all services to be performed by Utility hereunder, including all space, mailing service, telephones, personal services, and supplies, except that Authority will furnish to Utility purchaser contract forms, rate charts, and any other standard forms regularly made up by the Authority.

**Article 19:** Utility may consent that any Retailer make a new contract with the Purchaser of any Customer Paper not in default, if the purpose is to extend the time of credit for payment of the balance due under the original Customer Paper; **Provided**, that the term of the new contract, plus the time then elapsed since the original contract was executed, shall not exceed the maximum period of time for which credit could have been extended under the original contract, and that the new contract in every other respect meets the requirements of Customer Paper as set out in Article 3 hereof.

The amount of the refinanced contract (which in the making of the refinanced contract shall be treated for all purposes as though it were the cash sale price of the appliance under an original contract) shall be the balance owing under the original contract less unearned finance charges, which latter sum shall be determined as provided in Article 20 hereof. Such refinanced contracts shall thereafter be considered as Customer Paper for all purposes of this contract, and Utility shall be entitled to the same sums for its services in connection therewith as in the case of original Customer Paper. Utility shall not, in any other manner, without written consent of Authority, waive,

**Exhibit "E"**—Continued.

adjust, compromise, extend, or renew any right which Authority or Trustee may have against any Purchaser or Retailer.

**Article 20**: If any Customer Paper is refinanced, as provided in Article 19 hereof, or is repurchased by Retailer, or is paid up in full in advance of maturity, the amount due on the Customer Paper at that time shall be the unpaid face amount less unearned finance charges, the latter to be determined as provided in Authority's then prevailing chart of finance charges.

**Article 21**: If, by reason of any default of Utility in the performance of any of its obligations under this contract, Authority or Trustee shall lose any of its rights with reference to any Customer Paper against any Purchaser, Retailer, or Manufacturer, Utility shall immediately, upon demand, purchase from Authority or Trustee, at a price equal to the unpaid face amount thereof, any such Customer Paper.

**Article 22**: This contract shall inure to the benefit of and bind the successors and assigns of the parties hereto to the same extent as the original parties, and shall be in effect from the date of execution until cancelled by either party by thirty (30) days written notice to the other party. Such cancellation shall not affect any obligation of any party with respect to Customer Paper purchased prior thereto.

**Article 23**: It is agreed that if any change in the obligation of Utility with reference to receiving or collecting of Customer Paper is mutually agreed on by the parties hereto, such change may be authorized by a letter from Authority to Utility and such letter, when acknowledged by Utility, shall become a part of this contract, which shall otherwise remain unchanged and in full force and effect.

**Exhibit "E"**—Continued.

**Article 24:** The parties hereto agree that Trustee has no obligations hereunder, but that any obligation of Authority hereunder may, at the option of Authority and Trustee (or any successor of Trustee) be performed by Trustee (or any successor of Trustee) and that such performance will be accepted by Utility as a compliance with this contract to the same extent as though such performance had been by Authority itself. The parties hereto further agree that all of Utility's obligations hereunder, however, expressed and to whomsoever stated to run, shall be deemed to run severally to Trustee (or any successor of Trustee) and to Authority, and any of said obligations may at any time and from time to time be enforced severally, in whole or in part, by suit or otherwise, by Authority or by Trustee (or any successor of Trustee); **provided** that satisfaction to one shall constitute satisfaction to both.

In Witness Whereof, the parties hereto have caused this contract to be executed and their respective seals to be affixed hereto the day and year first above written.

(Seal) .....Company

Attest:..... By: .....
Secretary

(Seal) Electric Home and Farm Authority, Inc.

Attest:..... By: .....
Secretary

Electric Home and Farm Authority, Inc.
Trustee under a trust deed executed
(Seal) in May, 1934, to secure an issue of
notes to aggregate not in excess of
Attest:..... Ten Million ($10,000,000.00) Dol-
Secretary lars.

By: .....

## MOTION TO DISMISS FOR WANT OF EQUITY

Filed November 8th, 1934,

In the District Court of the United States
For the Northeastern Division of the Northern
District of Alabama

George Ashwander, William M. Browder, A. C. Garber, Joseph R. Cook, Jr., Bessie M. Gray, C. H. Gray, Clifford L. Lamar, Mary P. London, F. W. Murray, Eugene C. Morgan, Joseph A. Norman, C. L. Torbert, R. H. Woodrow, Tutwiler Investment Co., a corporation,
Plaintiffs

vs.

Tennessee Valley Authority, Electric Home and Farm Authority, Inc., et al.,
Defendants

In Equity
No.....

Now come the defendants, Tennessee Valley Authority, Arthur E. Morgan, Harcourt A. Morgan and David E. Lilienthal, by their attorneys, and move the Court to dismiss the bill of complaint heretofore filed in this cause and each of said defendants separately and severally set down and assign the following grounds for said motion:

1. There is no equity in said bill of complaint.

2. Under the facts averred in the bill of complaint, it does not appear that the plaintiff is entitled to maintain this suit.

3. Under the facts averred in the bill of complaint, it does not appear that the plaintiff is entitled to maintain this action as a stockholder of the Alabama Power Com-

pany, or in any other capacity. It affirmatively appears from the averments of said bill of complaint that the cause of action, if any, set out therein should be asserted by the corporation, the Alabama Power Company, and not by the plaintiff.

4. The averments of the bill of complaint with respect to duress alleged to have been practiced upon the Alabama Power Company by the Tennessee Valley Authority are insufficient to constitute a cause of action and are but the conclusions of the pleader.

5. Said bill of complaint is multifarious in that there is a misjoinder of causes of action, and a misjoinder of parties defendant.

Wherefore, the defendants pray that this Court will enter an order dismissing the bill of complaint as to them, upon the ground that there is no equity therein.

James Lawrence Fly
William C. Fitts, Jr.
Attorneys for Defendants

## MOTION TO STRIKE PORTIONS OF THE BILL.

Filed November 16th, 1934,

In the United States District Court
For the Northeastern Division of the Northern District
of Alabama.

George Ashwander, et al.,
Plaintiffs,
vs.
Tennessee Valley Authority, et al.,
Defendants.
In Equity
No. 355

Now comes the defendant, Tennessee Valley Authority, by its attorneys, and moves the court to strike from the Bill of Complaint heretofore filed in this cause, the following specified portions of said bill, this motion being directed separately and severally to each portion so specified upon the grounds that the said parts of the bill, and each of them, are impertinent, redundant, prolix, argumentative, and evidentiary and are not proper pleading. The specified portions to which this motion is directed are as follows:

1. The last paragraph of Section 5 of the Bill of Complaint.
2. The whole of Section 9 of the Bill of Complaint.
3. The whole of Section 10 of the Bill of Complaint.
4. The whole of Section 11 of the Bill of Complaint.
5. The whole of Section 12 of the Bill of Complaint.
6. The whole of Section 13 of the Bill of Complaint.
7. The whole of Section 14 of the Bill of Complaint.

8. The whole of Section 15 of the Bill of Complaint.
9. The whole of Section 16 of the Bill of Complaint.
10. The whole of Section 17 of the Bill of Complaint.
11. The whole of Section 18 of the Bill of Complaint.
12. The whole of Section 21 of the Bill of Complaint.
13. The whole of Section 22 of the Bill of Complaint.
14. The whole of Section 26 of the Bill of Complaint.
15. The whole of Section 27 of the Bill of Complaint.
16. The whole of Section 29 of the Bill of Complaint.
17. The whole of Section 31 of the Bill of Complaint.
18. The whole of Section 32 of the Bill of Complaint.
19. The whole of Section 33 of the Bill of Complaint.
20. The whole of Section 34 of the Bill of Complaint.
21. The whole of Section 36 of the Bill of Complaint.
22. The whole of Section 37 of the Bill of Complaint.
23. The whole of Section 38 of the Bill of Complaint.
24. The whole of Section 39 of the Bill of Complaint.
25. The whole of Section 40 of the Bill of Complaint.
26. The whole of Section 41 of the Bill of Complaint.
27. The whole of Section 42 of the Bill of Complaint.
28. The whole of Section 43 of the Bill of Complaint.
29. The whole of Section 43-A of the Bill of Complaint.
30. The whole of Section 44 of the Bill of Complaint.

Respectfully submitted,

James Lawrence Fly
William C. Fitts, Jr.
Attorneys for Tennessee Valley Authority.

## MOTION TO DISMISS

Filed Nov. 10, 1934

In the District Court of the United States
For the Northeastern Division of the
Northern District of Alabama

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| George Ashwander, William M. Browder, A. C. Garber, Joseph R. Cook, Jr., Bessie M. Gray, C. H. Gray, Clifford L. Lamar, Mary P. London, F. W. Murray, Eugene C. Morgan, Joseph A. Norman, C. L. Tolbert, R. H. Woodrow, Tutwiler Investment Co., a corporation, Plaintiffs<br>vs<br>Tennessee Valley Authority Electric Home and Farm Authority, Inc. et al., Defendants | In Equity No. 355 |

Now come the defendants, City of Florence, City of Sheffield, and City of Tuscumbia, and move the court to dismiss the bill of complaint filed in the court against them and others for the following reasons, and each of said defendants separately and severally sets down and assigns the following grounds for said motion:

1. There is no equity in said bill of complaint.

2. Said bill of complaint does not state sufficient facts to entitle plaintiffs to relief against these defendants.

3. It does not appear that the plaintiffs herein have sufficient interest in the subject matter to maintain this suit.

4. It does not appear that the plaintiffs herein are entitled to maintain this suit.

5. It affirmatively appears from the averments of said bill of complaint that the cause of action, if any, set out therein should be asserted by the Corporation, the Alabama Power Company, and not by the plaintiffs.

6. It affirmatively appears from the averments of said bill of complaint that by means of this suit plaintiffs are attempting to induce this court to interfere in the internal management of the Corporation, the Alabama Power Company.

7. It affirmatively appears from the averments of said bill of complaint that the plaintiffs by means of this suit are attempting to interfere with and upset the exercise of business management and discretion of the Board of Directors of the Alabama Power Company, and are attempting to have this Board substitute the judgment of the plaintiffs for the judgment of said Board of Directors.

8. It does not appear from the averments of said bill of complaint that the execution of the contract set out therein was ultra vires the Corporation, the Alabama Power Company, nor that any fraud was practiced upon the plaintiffs in the execution of said contract.

9. No sufficient reason is set out in said bill of complaint saying why the plaintiffs' minority stockholders in said Alabama Power Company should be permitted to maintain this suit on behalf of the said Corporation to set aside and annul the Contract between said Alabama Power Company and Tennessee Valley Authority, which contract, according to the averments of the bill of complaint, was within the powers of said Corporation.

10. The averments with respect to the duress alleged to have been practiced upon the Alabama Power Company are insufficient, and are but the conclusions of the pleader, and amount to no more than the statement that the Ten-

nessee Valley Authority and the defendants were about to do that which they had a perfect legal right to do.

11. Said bill of complaint is multifarious.

12. There is a misjoinder of causes of action in said bill of complaint.

13. There is a misjoinder of parties defendant in said bill of complaint.

14. Said bill of complaint attempts to state that following separate and distinct causes of action, which causes cannot be joined in one proceeding:

(a) An alleged cause of action on behalf of the plaintiffs and annul the contract between Tennessee Public Service Company and Tennessee Valley Authority upon the ground of duress.

(b) An alleged cause of action on behalf of the plaintiff and Alabama Power Company against Tennessee Valley Authority and the movants to restrain the execution of contracts between Tennessee Valley Authority and the movants upon the ground that the execution of said contract would result in unfair and illegal competition against Alabama Power Company to the injury of the plaintiffs, stockholders therein.

(c) An alleged cause of action on behalf of the plaintiff and Alabama Power Company to restrain the Alabama Power Company from carrying out an agency agreement it has concluded with the Electric Home and Farm Authority.

(d) An alleged cause of action on behalf of the plaintiffs and Alabama Power Company against the Tennessee Valley Authority to restrain the Authority from proceeding with its program and its use of federal funds in the effectuation of said program.

15. The averments with respect to the duress alleged to have been practiced by these defendants upon the Alabama

Power Company are insufficient in that by any interpretation at the most they charge the defendants, movants, with stating that they were about to do that which they had a perfect legal right to do.

16. It does not appear from the averments of said bill of complaint that the defendants movants did not have the legal right to borrow moneys from the Public Works Administration to erect their own municipal distribution systems, nor that said Public Works Administration did not have the legal right and power to make such loans.

17. If it is so averred, the averments are insufficient, are but conclusions of the pleader, and are defective in law and equity.

18. The averments of the bill that the execution of certain contracts by the defendants movants with the Tennessee Valley Authority would result in unfair and illegal competition with the Alabama Power Company are insufficient in law and equity because defendants movants have a perfect legal right to execute such contracts.

19. It affirmatively appears from the bill of complaint, more particularly in Exhibit 12 at page 11, that the franchises of the Alabama Power Company have elapsed in said cities, and that therefore neither the Company nor the plaintiffs have any rights of property in said cities on which the present action against defendants nor any charge of present or future illegal competition in said cities can be based.

20. The averments of the bill of complaint, and facts alleged in support thereof, regarding the acts of defendants movants to intimidate or influence the Alabama Public Service Commission and the courts and individuals in challenging the validity of the program of the federal government are insufficient and defective in law.

21. These movants are not necessary parties defendant in the original bill.

22. These movants are not proper parties defendant in the original bill.

23. The bill is multifarious as to these defendants in that it seeks relief against Alabama Power Company.

24. The bill is multifarious as to these movants in that it seeks relief against Tennessee Valley Authority.

25. It affirmatively appears on the face of the bill that the proposed sale by Alabama Power Company of its power system in Florence, Sheffield and Tuscumbia, is to the advantage of complainants and said company in this, to-wit:

The franchise of said Alabama Power Company to do business in each of said towns has expired and its properties in those towns have no value excepting a wreckage value at any time when said cities may in pursuance of their legal rights forbid further operations by said company in said towns; and it appears by the face of the bill that the properties of said company in said towns is about to be sold under the contract here being attacked at a high value.

Wherefore, the movants pray the court's judgment.

John E. Delony Jr.
City Attorney, Solicitor for the
City of Tuscumbia, Alabama
Stockton Cooke
City Attorney, Solicitor for the
City of Sheffield, Alabama
W. H. Mitchell
City Attorney, Solicitor for the
City of Florence, Alabama

## MOTION TO DISMISS

Filed Nov. 12, 19[illegible]

In the District Court of the United States
For the Northeastern Division of the Northern District of Alabama

George Ashwander, William W. Browder, A. C. Garber, Joseph R. Cook, Jr. Bessie M. Gray, C. H. Gray, Clifford L. LaMar, Mary P. London, F. W. Murray, Eugene C. Morgan, Joseph A. Norman, C. L. Torbert, R. H. Woodrow, Tutwiler Investment Co., a corporation,
Plaintiffs

vs.

Tennessee Valley Authority, Electric Home and Farm Authority, Inc., et al.,
Defendants

In Equity No. 355

Now comes the defendants, Town of Ardmore, Town of Austinville, Town of Cherokee, Town of Courtland, Town of Elkmont, City of Decatur, Town of Falkville, Town of Hartselle, Town of Leighton, Town of Moulton, Town of Red Bay, Town of Rogersville, City of Russellville, and Town of Town Creek, and moves the Court do dismiss the bill of complaint filed in the Court against them and others for the following reasons, and each of said defendants separately and severally set down and assign the following grounds for said motion:

1. There is no equity in said bill of complaint.

2. Said bill of complaint does not state sufficient facts to entitle plaintiffs to relief against these defendants.

3. It does not appear that the plaintiffs herein have sufficient interest in the subject matter to maintain this suit.

4. It does not appear that the plaintiffs herein are entitled to maintain this suit.

5. It affirmatively appears from the averments of said bill of complaint that the cause of action, if any, set out therein should be asserted by the Corporation, the Alabama Power Company, and not by the plaintiffs.

6. It affirmatively appears from the averments of said bill of complaint that by means of this suit plaintiffs are attempting to induce this Court to interfere in the internal management of the Corporation, the Alabama Power Company.

7. It affirmatively appears from the averments of said bill of complaint that the plaintiffs by means of this suit are attempting to interfere with and upset the exercise of business management and discretion of the Board of Directors of the Alabama Power Company, and are attempting to have this Board substitute the judgment of the plaintiffs for the judgment of said Board of Directors.

8. It does not appear from the averments of said bill of complaint that the execution of the contract set out therein was ultra vires the Corporation, the Alabama Power Company, nor that any fraud was practiced upon the plaintiffs in the execution of said contract.

9. No sufficient reason is set out in said bill of complaint saying why the plaintiffs minority stockholders in said Alabama Power Company should be permitted to maintain this suit on behalf of the said Corporation to set aside and annul the contract between said Alabama Power Company and Tennessee Valley Authority, which contract, according to

the averments of the bill of complaint, was within the powers of said Corporation.

10. The averments with respect to the duress alleged to have been practiced upon the Alabama Power Company are insufficient, and are but the conclusions of the pleader, and amount to no more than the statement that the Tennessee Valley Authority and the defendants were about to do that which they had a perfect legal right to do.

11. Said bill of complaint is multifarious.

12. There is a misjoinder of causes of action in said bill of complaint.

13. There is a misjoinder of parties defendant in said bill of complaint.

14. Said bill of complaint attempts to state the following separate and distinct causes of action, which causes cannot be joined in one proceeding.

(a) An alleged cause of action on behalf of the plaintiffs and Alabama Power Company against Tennessee Valley Authority to set aside and annul the contract between Alabama Power Company and Tennessee Valley Authority upon the ground of duress.

(b) An alleged cause of action on behalf of the plaintiff and Alabama Power Company against Tennessee Valley Authority and the moveants to restrain the execution of contracts between Tennessee Valley Authority and the moveants upon the ground that the execution of said contract would result in unfair and illegal competition against Alabama Power Company to the injury of the plaintiffs, stockholders, therein.

(c) An alleged cause of action on behalf of the plaintiff and Alabama Power Company to restrain the Power Com-

pany from carrying out an agency agreement it has concluded with the Electric Home and Farm Authority.

(d) An alleged cause of action on behalf of the plaintiffs and Alabama Power Company against the Tennessee Valley Authority to restrain the Authority from proceeding with its program and its use of federal funds in the effectuation of said program.

15. The averments with respect to the duress alleged to have been practiced by these defendants upon the Alabama Power Company are insufficient in that by any interpretation at the most they charge the defendants movants with stating that they were about to do that which they had a perfect legal right to do.

16. It does not appear from the averments of said bill of complaint that the defendants movants did not have the legal right to borrow moneys from the Public Works Administration to erect their own municipal distribution systems, nor that said Public Works Administration did not have the legal right and power to make such loans.

17. If it is so averred, the averments are insufficient, are but conclusions of the pleader, and are defective in law and equity.

18. The averments of the bill that the execution of certain contracts by the defendants movants with the Tennessee Valley Authority would result in unfair and illegal competition with the Alabama Power Company are insufficient in law and equity because defendants movants have a perfect legal right to execute such contracts.

19. The averments of the bill of complaint, and facts alleged in support thereof, regarding the acts of defendants movants to intimidate or influence the Alabama Public

Service Commission and the courts and individuals in challenging the validity of the program of the federal government are insufficient and defective in law.

Wherefore, defendants movants pray that this Court will enter an order dismissing the bill of complaint as to them because they are not interested in the other controversies set out and because the bill contains no equity which can be asserted against the defendants movants, and to all others named as defendants upon the ground that the bill does not contain equity.

John E. Delony Jr.
Stockton Cooke Jr.
Solicitors for Defendants.

## MOTION TO DISMISS ON BEHALF OF THE CITY OF ATHENS

Filed Nov. 15, 1934

In the District Court of the United States
For the Northeastern Division of the Northern
District of Alabama

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|---|---|
| George Ashwander, William W. Browder, A. C. Garber, Joseph R. Cook, Jr., Bessie M. Gray, C. H. Gray, Clifford L. Lamar, Mary P. London, F. W. Murray, Eugene C. Morgan, Joseph A. Norman, C. L. Torbert, R. H. Woodrow, Tutwiler Investment Co., a corporation, Plaintiffs<br>vs.<br>Tennessee Valley Authority, Electric Home and Farm Authority, Inc., et al., Defendants | In Equity No. 355 |

Now comes the defendant, City of Athens, and moves the Court to dismiss the bill of complaint filed in the court against it and others for the following reasons, and severally sets down and assigns the following grounds for said motion:

1. There is no equity in said bill of complaint.

2. Said bill of complaint does not state sufficient facts to entitle plaintiffs to relief against these defendants.

3. It does not appear that the plaintiffs herein have sufficient interest in the subject matter to maintain this suit.

4. It does not appear that the plaintiffs herein are entitled to maintain this suit.

5. It affirmatively appears from the averments of said bill of complaint that the cause of action, if any, set out therein should be asserted by the Corporation, the Alabama Power Company, and not by the plaintiffs.

6. It affirmatively appears from the averments of said bill of complaint that by means of this suit plaintiffs are attempting to induce this Court to interfere in the internal management of the Corporation, the Alabama Power Company.

7. It affirmatively appears from the averments of said bill of complaint that the plaintiffs by means of this suit are attempting to interfere with and upset the exercise of business management and discretion of the Board of Directors of the Alabama Power Company, and are attempting to have this Board substitute the judgment of the plaintiffs for the judgment of said Board of Directors.

8. It does not appear from the averments of said bill of complaint that the execution of the contract set out therein was ultra vires the Corporation, the Alabama Power Company, nor that any fraud was practiced upon the plaintiffs in the execution of said contract.

9. No sufficient reason is set out in said bill of complaint saying the plaintiffs minority stockholders in said Alabama Power Company should be permitted to maintain this suit on behalf of the said Corporation to set aside and annul the contract between said Alabama Power Company and Tennessee Valley Authority, which contract, according to the averments of the bill of complaint, was within the powers of said Corporation.

10. The averments with respect to the duress alleged to have been practiced upon the Alabama Power Company are insufficient, and are but the conclusions of the

pleader, and amount to no more than the statement that the Tennessee Valley Authority and the defendant were about to do that which they had a perfect legal right to do.

11. Said bill of complaint is multifarious.

12. There is a misjoinder of causes of action in said bill of complaint.

13. There is a misjoinder of parties defendant in said bill of complaint.

14. Said bill of complaint attempts to state the following separate and distinct causes of action, which causes cannot be joined in one proceeding.

(a) An alleged cause of action on behalf of the plaintiffs and Alabama Power Company against Tennessee Valley Authority to set aside and annul the contract between Tennessee Public Service Company and Tennessee Valley Authority upon the ground of duress.

(b) An alleged cause of action on behalf of the plaintiffs and Alabama Power Company against Tennessee Valley Authority and certain municipalities, of which the movant is one, to restrain the execution of contracts between Tennessee Valley Authority and the movants upon the ground that the execution of said contract would result in unfair and illegal competition against Alabama Power Company to the injury of the plaintiffs, stockholders, therein.

(c) An alleged cause of action on behalf of the plaintiff and Alabama Power Company to restrain the Power Company from carrying out an agency agreement it has concluded with the Electric Home and Farm Authority.

(d) An alleged cause of action on behalf of the plaintiffs and Alabama Power Company against the Tennessee Valley Authority to restrain the Authority from proceeding with its program and its use of federal funds in the effectuation of said program.

15. It affirmatively appears from the bill of complaint that the City of Athens cannot be charged with having exercised any duress described upon the Alabama Power Company in its contract for sale of these properties since the said bill of complaint, more particularly in Paragraph 43 (a), discloses that said City of Athens already owns its own existing distribution system, and, therefore, could not be charged with illegally threatening to build a system competing with the Company system.

16. The averments of the bill that the execution of certain contracts by defendant movant with the Tennessee Valley Authority would result in unfair and illegal competition with the Alabama Power Company are insufficient in fact because defendant movant does not compete with said Alabama Power Company, and defective in law and equity because defendant movant has a perfect legal right to execute such contracts.

17. The averments of the bill of complaint and facts alleged in support thereof regarding the acts of defendant movant to intimidate or influence the Alabama Public Service Commission, Courts and individuals in challenging the validity of the program of the federal government are defective as a matter of law.

Wherefore, defendant prays that this Court will enter an order dismissing the bill of complaint as to it, because it is not interested in the other controversies herein above set out and because the bill is peculiarly defective in equity as to it, and to all others named as defendants upon the ground that the bill does not contain equity.

Edw. Goodrich
City attorney, city of
Athens, Alabama.

## OPINION.

Filed November 28th, 1934.

In the District Court of the United States
For the Northeastern Division of the Northern District
of Alabama.

George Ashwander, et al,
complainants,
vs.
Tennessee Valley Authority, et al,
respondents.
} In Equity No. 355.

On Motion to Dismiss Bill of Complaint,
W. I. Grubb, District Judge.

1. The motion to dismiss criticizes the bill for prolixity, invoking Equity Rule Number Twenty-five; also, for multifariousness and misjoinder under Equity Rule Twenty-six. The motion to dismiss is not well taken on these grounds.

2. The right of the plaintiffs as preferred stockholders of the Alabama Power Company, for themselves and other preferred stockholders, to maintain the bill of complaint in the name of the corporation, is challenged. The settled rule is that stockholders cannot maintain a bill in the nature of this one, to review transactions of the corporation upon the ground that the management acted unwisely or because of mistaken business judgment. It must appear that they acted collusively or fraudulently or oppressively or beyond their powers, or under duress or with gross negligence.

There is no showing that the management of the Ala-

bama Power Company were guilty of fraud, oppression, or gross negligence. They are shown to have acted in good faith and because they thought the transaction with the Tennessee Valley Authority was in the interest of the Alabama Power Company.

It is not shown that the management of the Alabama Power Company, in the transaction with the Tennessee Valley Authority, acted under legal duress. The claim, in this respect, is that threats of duplication of its facilities, and taking its market from the Alabama Power Company, in this way, was legal coercion, which would avail to avoid the contract at the instance of the Alabama Power Company. If the action of the Tennessee Valley Authority was legal, competition caused by it would cause no legal injury. If it was illegal, then the person aggrieved could have resorted to the courts to restrain it in advance of the infliction of the injury, just as it now asks the court to interpose after the alleged injury has been partly consummated. If the management acquiesced in the transaction, instead of resorting to the courts for protection against illegal competition or threats of it, it would not constitute legal duress.

If the Tennessee Valley Authority had no legal authority to make the contracts, which it did make with the Alabama Power Company, and the execution of the contracts was incomplete, or future performance of them over a period provided for the Alabama Power Company could ask for their rescission, if restitution were practicable, and if it refused to do so on request, the plaintiffs, as preferred stockholders of that Company, could institute a suit in equity for that relief. In this case, possession of the property purchased from the Alabama Power Company has not yet been delivered, and the contracts remain open for continued performance in some features until December

31st, 1938. If the Tennessee Valley Authority had no power to enter into the transaction evidenced by the contracts, they are subject to be set aside, either on its application or that of the Government, and the consideration paid to the Alabama Power Company for the transfer recovered back by the Government. The United States would not be estopped, certainly, if restitution could be made, by a retransfer of the conveyed property to the seller. An ultra vires transaction is one of the classes that a stockholder can complain of, if the corporation refuses to act. The Alabama Power Company, though it was authorized to sell the property, would have standing in equity to rescind the sale, if the purchaser was not authorized to buy or the sale would accomplish an illegal object. The obligation must be mutually binding on each.

The right of the plaintiffs to succeed in their suit, depends on a showing that the contracts with the Alabama Power Company were ultra vires or illegal and unexecuted, and that restitution was possible. The relief accorded to the plaintiffs, suing altogether in their capacity of preferred stockholders of the Alabama Power Company, extends no further than that the corporation be freed from the obligation of the claimed ultra vires or illegal transaction with the defendant the Tennessee Valley Authority, and with its co-defendant and subsidiary, the Electric Home and Farm Authority, Inc. This relief would include the restraining of the further execution and performance of the contracts between the Tennessee Valley Authority, the Electric Home and Farm Authority, Inc., and the Alabama Power Company. No other relief prayed for in the bill would be appropriate to plaintiffs, suing entirely in their capacity as preferred stockholders of the Alabama Power Company.

The remaining question is whether or not the Tennessee

Valley Authority had the power to enter into the transaction and make the contracts with the Alabama Power Company that are complained of. The agency contract between the Electric Home and Farm Authority and the Alabama Power Company would stand or fall upon the decision of the same question.

The powers of the Tennessee Valley Authority are contained in the Act of Congress, creating it. (Act of Congress, approved May 1st, 1933).

Its caption recites its purpose to be to improve the navigability and to provide for the flood control of the Tennessee River; to provide for reforestation and the proper use of marginal lands in the Tennessee Valley; to provide for the agricultural and industrial development of said Valley; to provide for the National defense, by the creation of a corporation for the operation of Government properties at and near Muscle Shoals, in the State of Alabama, and for other purposes. It authorized the construction of two dams, and the taking possession by the corporation created, of the property of the Government at Muscle Shoals, Alabama, including Wilson Dam, and nitrate plants. Section 4 (1) authorized it "to produce, distribute, and sell electric power as **herein particularly specified.**" Section 10 authorized its board of directors "to sell the surplus power, not used, in its operations, and for operation of locks and other works, generated by it to States, Counties, Municipalities, Corporations, Partnerships or Individuals, according to the policies hereinafter set forth; and to carry out said authority, the board is authorized to enter into contracts for such sale, for a term not exceeding twenty years, and in the sale of such current by the board, it shall give preference to States, Counties, Municipalities and cooperative organizations of citizens, or farmers, not organized, or doing business for profit, but

primarily for supplying electricity to its own citizens or members."

The United States is a government of enumerated powers, conferred in express terms or by necessary implication on it by the Constitution. No power is conferred on it to engage in any private business, unless incidental to some power specifically granted. The power to produce, distribute, and sell electric power or any other commodity, generally, is not in terms granted, and must be connected with a granted power, in order to exist. In this case, it is sought to be connected with the power to improve navigable rivers, the power to provide for the National defence or the power to make needful regulations concerning Government owned property. The Government has the right to create electric power to aid its operations, under any one or all of these granted powers. It also has the implied right to dispose of any surplus power not used for the named purposes, to prevent waste. It has no power to produce and sell electric power, except as incidental to a granted power, as in case of the disposition of such a surplus. This is especially true within the limits of a State of the United States. If the program of the Tennessee Valley Authority involves only the salvaging of excess or unused electric power, produced in aid of its operations in improving the navigation of the Tennessee River, or in relation to its operations at the Wilson Dam, or the Nitrate plants, there located for the National defence, or for the benefit of lands owned by it in the Government reservations, at or in the vicinity of Muscle Shoals, its right to dispose of such excess Electric power cannot be questioned. This implies the existence of a surplus in its legitimate operation, and the power of disposition would be so limited. If its program is more extensive, and amounts to an engaging in and carrying

on, independent of the question of surplus power and without relation to a granted power, the general business of producing and selling electric power within the limits of Alabama, it is ultra vires of the power actually conferred or that could have been conferred by Congress on the Tennessee Valley Authority by its Act of Incorporation.

The solution of the question depends upon the extent of its program in this respect. If a substantial relation is shown between the granted power and the surplus, it is enough. If there is no substantial relation between the granted power and the creation of the surplus electric power, the courts should declare the creation and disposition of it, unauthorized. The distinction is between a salvaging of unused or excess power created in aid of operations under a Constitutional power, and so incidental and related to it, and an engaging in the production and sale of electric energy, as any other utility would do, independently of any constitutionally granted power, and unrelated to it. A corporation created by Congress would have no greater authority to do this than would the Government itself. It would be the instrument of the Government, and its functions restricted to what was within the power of the Government.

The fact that purposes other than navigation, national defense, or regulation of proprietary property, are incidentally served, would not invalidate the exercise of the authority conferred, even if the other purposes alone would not have justified an exercise of the power. However, if the other purposes are not related to any constitutional powers or are not incidental to their exercise, they stand independently for their legality, and are not supported by them. A plan for the development of the Tennessee River Valley, as a social experiment, is in no sense related to the improvement of navigation of the

Tennessee River, or to the National defense, or to the regulation of Government-owned lands, and the production and sale of electrical power in aid of such development and experiment, would not be incidental or related to the exercise of any of the constitutional powers named.

The scope of the project of the Tennessee Valley Authority, as outlined by its Directors, and, as it is being administered by it, forbids the idea that its purpose in dealing with electric power is for the salvaging of a surplus to prevent its waste. On the contrary, its disclosed purpose is to furnish an example of Government operation of electric power production in the interest of public operation and ownership of such utilities, and also to furnish physical aid to a social experiment being conducted by the Authority in the Tennessee River Valley, for the improvement of the race. The official declarations of the directors can be read only with this result. They show that the project is not limited to the improvement of river navigation, to the National defense, or to the proprietory interest of the Government in its own lands, but is infinitely wider in scope, being intended to create an ideal community, as a social experiment, and to give it aid by supplying cheap electric power, produced by it, for that purpose.

For the accomplishment of these aims, a sum approaching a billion dollars has been made potentially available; two additional dams are being constructed, of a type calculated to produce a maximum of electric energy, rather than that best adapted for the improvement of navigation; the construction of a third dam is announced; one hundred thousand dollars has been allocated to an endeavor by research, to discover additional uses of coal, to take the place of those displaced by the use of water power, in the production of electrical power. The declara-

tions of the directors of the Authority, as to their purposes and expectations, and what has been and is being done in the development of electric power, are convincing, that the Authority is engaged in a project, other than the improvement of navigation and for the production and disposition of electrical power, as an independent utility would do, and on a larger scale.

By Section 4 (1) and 10, the Act confers power on the corporation to produce, distribute and sell electric power, but only "as herein particularly specified." Section 10 restricts the power to sell, to a sale of "the surplus power not used in its operations, and for operation of locks and other works generated by it." The Act authorizes the corporation to sell only surplus power in excess of or unused for its needs, for its constitutional function.

Even if the Act of Congress itself does not infringe the Constitution, if the management of the Authority is mistakenly construing and administering the Act, by engaging under color of, but in excess of its terms, in an enterprise which is not authorized by the Act, and which the Congress would not be authorized to enact, such administrative action should be enjoined as ultra vires of the corporation. As the contracts of January 4, 1934, February 13, 1934, and August 9th, 1934, were steps taken to carry out the ultra vires enterprise of the Authority in engaging as a public utility in the production and sale of electric power, within the limits of the State of Alabama, not in aid of the exercise of any constitutional power, they were taken without authority, and the completion of the contracts and their performance should be restrained, and the contracting parties restored to their former status, as far as may be possible.

The plaintiffs, suing solely as preferred stockholders of the Alabama Power Company, should be accorded only

the relief that it would be entitled to, if it were the plaintiff, i. e., to have the ultra vires transaction set aside, the contracts cancelled, and their future performance enjoined. The exercise of the right of the Authority to produce electric power for use in its operations, in the improvement of navigation or any other constitutional power, and to sell any legitimate surplus power so created, should not be interfered with. The transaction and contracts between the Authority and the Alabama Power Company have no relation to such production of electric power, or to the disposal of such a surplus. They are in aid of the broader project, viz., to furnish a yardstick in the interest of consumers of electric power, and help the development of the Tennessee River Valley, as a social experiment, by selling cheap electric power.

Under our dual system of government, the United States, in the exercise of its constitutional powers, even within the confines of one of the States, has paramount power over the State. In matters of internal concern not affecting any constitutional power of the national government, the State, under the reservation contained in the Tenth Amendment, has exclusive authority. If the Tennessee Valley Authority, within this State, is engaging in a proprietary adventure, unrelated to any power conferred upon it or on its principal by the Constitution, then it is doing an unauthorized thing. Engaging in the business of producing and selling electric power, as a utility, it would become subject to state regulation, and likely be in competition with private utilities, or with the State or its municipalities, while so engaged. It is contrary to the genius of our dual government, that the national government should do business, in a proprietary capacity, of an internal nature, and not related to a constitutional power, within the limits of a State, and occupy extensive areas

of territory therein for that purpose. It would be fraught with possibilities of collision between such governments and individuals. The Tennessee Valley Authority, if the averments of the bill are sustained, is engaged in producing and selling electric power in Alabama, in an enterprise having no substantial relation to the improvements of navigation or any constitutional power, on an elaborate scale, building dams designed for maximum electric power production to increase surplus power; fixing rates and terms in displacement of State functions, with the declared purpose to increase the magnitude of the enterprise in the future. This is not a plan involving only the disposing of surplus electric power necessarily created in the improvement of navigation of the Tennessee River.

The motion to dismiss the bill of complaint is overruled, and the defendant is allowed twenty days in which to answer.

## DECREE ON MOTIONS

Filed November 28, 1934

In the United States District Court
For the Northeastern Division of the Northern
District of Alabama

George Ashwander, et al,
Plaintiffs,
vs.
Tennessee Valley Authority, et al,
Defendants.
} In Equity

This Cause came on to be heard on various motions filed herein by certain of the defendants, viz.,

(1) A motion filed November 8, 1934, by Electric Home & Farm Authority, Inc., to quash service;

(2) A motion filed November 8th, 1934, to dismiss the bill as to Tennessee Valley Authority, Arthur E. Morgan, Harcourt A. Morgan, and David E. Lilienthal;

(3) A motion filed November 12, 1934, by the Towns of Ardmore, Austinville, Cherokee, Courtland, Elkmont, Falkville, Hartselle, Leighton, Moulton, Red Bay, Rogersville, Town Creek, and the Cities of Russellville and Decatur, to dismiss the bill;

(4) A motion filed November 15, 1934, by the City of Athens, to dismiss the bill;

(5) A motion filed November 16, 1934, by the Cities of Florence, Sheffield and Tuscumbia, to dismiss the bill;

and, upon consideration, it is by the Court

Adjudged, Ordered and Decreed that said several motions be and the same are hereby overruled and denied, and that the respective defendants above named be given twenty days from the date of this decree within which to answer the bill of complaint, to all of which the defendants all severally except.

Given, this 28th day of November, 1934.

W. I. Grubb
U. S. District Judge.

## ANSWER OF RESPONDENT ALABAMA POWER COMPANY

Filed November 9, 1934.

In the District Court of the United States
For the Northwestern Division of the Northern
District of Alabama

George Ashwander, et al.,
Complainants,
vs.
Tennessee Valley Authority, et al.,
Respondents.
} In Equity.

Comes Alabama Power Company, one of the respondents in the above entitled cause, and for answer thereto, says:

1. The averments of Paragraph 1 are admitted to be correct.

2. The averments of Paragraph 2, in so far as they concern the respondent Alabama Power Company, are admitted to be correct. The averments contained in this paragraph relating to the theory of the bill are admitted to be correct. The averment indicating that Alabama Power Company (herein sometimes called respondent company) is guilty of unlawful or wrongful acts in the alleged transaction is denied. As to the averment of duress wrongfully exerted by TVA in pressing the alleged unlawful or wrongful program, this is a matter of law to be determined by the facts surrounding the transaction, which are hereinafter set forth in paragraphs 17, 19 and 20 of this answer.

3. The averments of Paragraph 3, subdivisions (a), (e), (f) and (g), are admitted to be correct. As to the other averments in Paragraph 3, respondent is not advised, and neither admits nor denies the same.

4. The averments of Paragraph 4 are substantially correct.

5. The averments of Paragraph 5 are substantially correct, except as to the allegation in the last paragraph thereof concerning competitive duress and seizure of the market and service area of this company, concerning which this respondent company avers that this is a matter of law to be determined by the facts surrounding the transaction.

6. The averments of Paragraph 6 are correct.

7. The averments of Paragraph 7 are correct.

8. In answer to Paragraph 8, respondent company admits that The Commonwealth & Southern Corporation owns all the common stock of the companies therein mentioned, except The Tennessee Electric Power Company, and as to such company, Commonwealth & Southern owns a substantial majority of such common shares; but this respondent denies that Commonwealth & Southern controls or dominates respondent company. While the executive officers and management of Commonwealth & Southern actively concern themselves with the general policies of respondent company, such officers do not dominate the policies and all-important action of the respondent company in matters of fundamental policy of the character of the transactions complained of in the bill of complaint; nor are the action and non-action of the respondent company and its board of directors herein complained of controlled by Commonwealth & Southern. While the contract with TVA, dated January 4, 1934, was substantially ne-

gotiated by executives of Commonwealth & Southern before submission to respondent company, the latter states that its officers and directors were conversant with and approved the progress of the negotiations and under the circumstances finally approved the contract. The averments contained in the last paragraph of Paragraph 8 are denied by this respondent and this respondent states that the terms of the contract of January 4, 1934, speak for themselves and that there is no adverse bearing as between Commonwealth & Southern, Alabama Power Company, Georgia Power Company, Mississippi Power Company and The Tennessee Electric Power Company, parties to such contract. As to whether the companies therein mentioned were subjected to duress in the negotiation and execution of the agreement is a conclusion to be drawn from all of the facts.

9. In answer to Paragraph 9 respondent company says that it is not advised as to the averments thereof and neither admits nor denies the same.

10. In answer to Paragraph 10 respondent company says that it is not advised as to the averments thereof and neither admits nor denies the same.

11. Respondent company admits that the direct and proximate result of the program referred to in Paragraph 11, if permitted to be executed in the respects complained of in the bill, will be the loss in whole or in part of the franchises, business and revenues of the respondent company and permanent impairment of the value of its capital stock, demoralization of its business, discrimination against its customers and its service area and serious impairment of its good will.

As to the other averments of Paragraph 11, respondent

company is not advised and neither admits nor denies the same.

12. In answer to Paragraph 12 respondent company says that it is not advised as to the averments thereof and neither admits nor denies the same.

13. In answer to Paragraph 13 respondent company says that it is not advised as to the averments thereof and neither admits nor denies the same.

14. In answer to Paragraph 14 respondent company says that it is not advised as to the averments thereof and neither admits nor denies the same.

15. In answer to Paragraph 15 respondent company says that it is not advised as to the averments thereof and neither admits nor denies the same.

16. In answer to Paragraph 16 respondent company admits that in the negotiations between the President of Commonwealth & Southern with respondents A. E. Morgan and Lilienthal representing TVA, which resulted in the contract of January 4, 1934, Lilienthal advised in substance as set forth in such paragraph.

Respondent admits that the yardstick of TVA resulted in the promotion of municipal ownership of electric utilities as averred therein.

As to the other averments contained in Paragraph 16, the respondent company is not advised, and neither admits nor denies the same.

17. As to the averments contained in Paragraph 17 respondent company admits that the public statements of TVA indicated the program therein alleged; and the directors of respondent company considered that to vest such an agency as therein alleged with unlimited power and access

to public funds, in a program of business competition and public ownership promotion in the area served by respondent company would in effect destroy this respondent's property; and such conclusion on its part was the principal inducement for it to enter into the contracts of January 4 and August 9, 1934; and respondent company thereby was and will be enabled to salvage a larger amount of its property than it could have done by competition. As to the remaining averments of Paragraph 17, respondent company is not advised and neither admits nor denies the same.

18. Respondent company admits as true the averments of paragraph (b) (ii) of Paragraph 18 in so far as they concern the system of respondent company, but as to the remaining averments of Paragraph 18 respondent company is not advised and neither admits nor denies the same.

19. As to Paragraph 19, respondent company is advised that TVA in coordination with the Public Works Administration aided and encouraged various of the respondent municipalities to apply for and obtain approval of grants and loans of PWA funds to enable them to enter into the business of distributing TVA power within the area served by respondent company; and respondent company admits that TVA in addition held out to this respondent the threat of direct construction and competitive operation, and that a number of such grants and loans was formally or informally approved.

Respondent company became convinced that the construction of a competing system and its operation by TVA, or by any municipality under contract with TVA at rates lower than could be offered by respondent company without involving substantial sacrifice of a fair and reasonable return and certain demoralization of its entire business, would mean disaster for respondent company. Respondent

company admits that by the terms of the contract of January 4, 1934, and by public declarations of intent, TVA advised respondent company that the truce as to territory was temporary and would terminate with the completion of the Norris hydro-electric plant. Respondent company further admits that there is no substantial area or existing market in transmission distance of the existing or proposed plants not already served by existing utilities subject to regulation by the respective states in which they serve. As to the other averments of Paragraph 19, respondent company is not advised and neither admits nor denies the same.

20. As to Paragraph 20, respondent company admits that under the circumstances of threatened competition, directed or controlled by TVA as averred therein, this respondent agreed to the sale of certain of its transmission lines and property, and entered into the contract dated January 4, 1934, a copy of which, with certain omissions, is attached to the bill as Exhibit No. 5. Respondent company admits that at and before the execution of the contract, the threat was made to use federal funds to duplicate the facilities of respondent which would result in competition with rates not attainable by or permissible to this respondent, and such rates would be stipulated, controlled and regulated by TVA.

21. In answer to Paragraph 21, respondent company states that the total consideration to be paid under the contract of January 4, 1934, was $1,150,000, and that the lands on the Tennessee River constituting in part the dam site at Wheeler Dam, were included in such purchase price as stated in the bill. The properties were sold as a group and at the instance of TVA the contract of January 4, 1934, was amended as alleged in the bill and the consideration to be paid for the remaining properties increased a propor-

tionate amount, as a result of which this respondent would receive the same consideration for the properties after such amendment as it would have received in the contract of January 4th. There was no attempt by this respondent to overreach any owners of overflow lands located on the Tennessee River and this respondent concurred in the amendatory contract only because it was requested by TVA so to do, and if there be any odium attached to the transaction, it does not affect this respondent.

22. In answer to Paragraph 22 respondent company states in answer to (a): the facts surrounding the agreement referred to have heretofore been stated by this respondent in Paragraphs 17, 19 and 20 of its answer and whether or not such facts result in legal duress it is advised is a conclusion of law; (b) and (c): respondent company is not advised as to the purposes of TVA as averred, and neither admits nor denies the same; (d), (e), (f), (g) and (h): respondent company is advised that the matters set out in these paragraphs of Paragraph 22 are conclusions of law, which it is not required to answer.

23. In answer to Paragraph 23 respondent company admits the correctness of the averments therein except as the same relate to duress, as to which this respondent refers to and adopts the statements as to the circumstances surrounding the execution of such contract which are set out in Paragraphs 17, 19 and 20 of this answer.

24. In answer to Paragraph 24 respondent company says that it is advised that the matters alleged therein involve questions of law which do not require an answer by this respondent.

25. In answer to Paragraph 25 respondent company admits that the cost of the properties agreed to be sold to

TVA as reflected in the investment account of this respondent is as averred; that the total purchase price proposed to be paid for such properties amounts to $2,179,518, a consideration which includes an item of approximately $29,518 for the Athens wholesale urban distribution system and the Belle Mina urban distribution system, which were not included in either contract of January 4 or of August 9, 1934; that the arithmetical computation of deducting $150,000 from the tabulation set out in this paragraph will leave $2,029,000 as averred; that the revenue derived from the operations of said properties during the calendar year 1933 was approximately $750,000 and that the customers transferred to TVA under the proposed sale amount to approximately one-tenth of the total consumers directly served by this respondent; that the consideration proposed to be paid for such property is less than the book cost to this respondent of such properties to the extent averred and did not take into account any corporate expense referable to the establishment of the business or the elements of value inherent in going concern, nor any damage to the system of this respondent as a whole which would result from the severance from its system of the properties to be conveyed; that in the event TVA should substantially extend its sale of power to the area now served by respondent company and in competition with this respondent at the rates now proposed by TVA the consequences resulting to this respondent would be disastrous; that respondent company would withdraw from the area described in the contract of January 4 in the event it transfers such property as it has agreed to do, and that the proposed transfer contemplates the transfer of the franchises to TVA now owned by respondent in the municipalities involved in said contracts. This respondent admits that if this transfer is not completed and its property is duplicated within such mu-

nicipalities with funds supplied through federal loans with thirty per cent grant, and if power is supplied over such municipally-owned or government-owned systems at the proposed rates of the TVA, respondent company will not be able to compete and its properties will be greatly damaged if not destroyed for the purposes for which they were constructed. This respondent further states that such were the conditions with which the company and its officers were faced when it agreed to sell the properties in question.

26. In answer to Paragraph 26 respondent company states that it is not advised as to the facts averred therein and neither admits nor denies the same.

27. In answer to Paragraph 27 respondent company says that, except as to conclusions of law which it is advised it is not required to answer, it is not advised as to the averments of such paragraph and neither admits nor denies the same.

28. In answer to Paragraph 28 respondent company states that it is advised that the matters alleged therein are conclusions of law which it is not required to answer.

29. In answer to Paragraph 29 respondent company says that it is not advised as to the averments thereof and neither admits nor denies the same.

30. In answer to Paragraph 30 respondent company says that it has general notice and knowledge of the source of funds as stated therein but denies that it is subject to penalties as therein set forth.

31. In answer to Paragraph 31 respondent company says that it is not advised as to the averment of facts therein contained and neither admits nor denies the same.

32. In answer to Paragraph 32 respondent company ad-

mits that under Section 19 of the contract of January 4 it agreed to co-operate with TVA and EHFA in the sale of electrical appliances, and further states that the obligation of the respondent is more clearly and definitely stated in such contract and in the agency and dealer contracts between respondent and EHFA. This respondent is not advised as to the other facts averred therein and neither admits nor denies the same.

33. In answer to Paragraph 33 respondent company states that its rates and schedules in force are approved by the Alabama Public Service Commission and that such rates are reasonable; and that this respondent is not advised as to the remaining averments thereof and neither admits nor denies the same.

34. In answer to Paragraph 34 respondent company states that if the release marked Exhibit 7 referred to in paragraph numbered 1 of Paragraph 34 is read to include this respondent, the statements contained in such release are unfair and untrue in so far as applicable to this respondent. As to the other averments of such Paragraph 34 this respondent is not advised and neither admits nor denies the same.

35. In answer to Paragraph 35 respondent company has heretofore in Paragraphs 17, 19 and 20 of this answer stated the facts upon which the contracts for the sale of properties to TVA were based, and further states that this respondent in entering into contracts to sell such properties exercised its best judgment in view of such facts. Other than the municipalities expressing through their electorate their determination to build and acquire municipally-owned systems in this area and entering into negotiations with TVA with respect to a power supply, this respondent is not advised as to respondent municipalities

aiding, abetting or participating in any unfair competition.

36. In answer to Paragraph 36 respondent company says that it is not advised as to the facts therein averred and neither admits nor denies the same.

37. In answer to Paragraph 37, respondent company admits that it has two contracts with EHFA: One, known as the agency agreement, dated May 21, 1934; and the other, known as a dealer contract, dated May 21, 1934; and in view of the charge in said Paragraph that the use of federal funds for the TVA-EHFA program is a misuse thereof, and that respondent company, as agent for EHFA, incurs risk or liability for reimbursement, respondent is advised by its counsel that it should set forth the facts as to its participation in the use of such federal funds.

That at the request of EHFA, respondent company has distributed to approximately three hundred independent dealers throughout Alabama a package of literature in an envelope supplied by Electric Home and Farm Authority, entitled, "A Message for Electric Dealers," such envelope bearing on the outside the trade mark or copyrighted emblem, "TVA—Electricity For All," and also bearing the words, "Electric Home and Farm Authority, Chattanooga—Official Business," and in the upper right-hand corner, the words, "Penalty for Private Use to Avoid Payment of Postage $300;" the literature contained therein being as follows:

(a) EHFA Finance Plan for Approved Appliances.

(b) Official Rate Chart for EHFA purchase plan for approved appliances.

(c) EHFA P M 1 Form, being a form of chattel mortgage intended for execution by purchasers of approved appliances.

(d) Dealers' application and repurchase agreement, being EHFA Dealer Form No. 1.

That respondent company, having distributed the literature to said independent dealers at the request of EHFA has caused its representatives to visit all such dealers further to explain the plan and details and to assist in filling out applications for licensing such dealers; and as a result of such activities, numbers of dealer applications have been filed with EHFA at Chattanooga, out of which there have been sixty-five of such applications approved by EHFA, representing independent dealers throughout the State of Alabama. After the application is approved and dealer is appointed, if and when such dealer sells TVA appliances on deferred payments, the deferred payment contracts are forwarded to respondent company, and this respondent company is required by its contract as agent for EHFA to advance to such dealers the principal amount thereof, and in due course the contracts are sent to EHFA at its Chattanooga office, and the latter reimburses respondent for such advances; and respondent company is required by its agency contract to collect monthly instalments due on such independent dealer contracts by electric customers of respondent company, which instalments are shown on separate bills sent to customers along with their electric service accounts; and for respondent company's services as such agent, it is paid by EHFA an initial booking charge of one dollar for each contract purchased from dealers and twelve and one-half cents per month for each bill rendered by respondent company under such dealer contracts to purchase.

The trade mark, or emblem, "TVA—Electricity for All", is required by the terms of such contracts to be stamped on all approved appliance units which respondent

company may sell, and upon all sales literature which respondent company used in connection therewith; that Electric Home and Farm Authority has supplied respondent with cards to be displayed in all dealer windows, including windows in the various stores of the respondent, bearing such insignia, and at the request of the EHFA we distribute from time to time such cards and other literature to other dealers as the agent of the EHFA under our agency contracts; and further in connection with any newspaper publication or reprint of this insignia in explanation of it we must use the following language:

> "This is the emblem of the Electric Home and Farm Authority, an agency of the Tennessee Valley Authority. On an appliance, it means that the product is manufactured to standard quality specifications of Electric Home and Farm Authority, is priced reasonably and is being sold in a community where electric rates are reasonable enough to make use of the appliance feasible for the family of modest income. All appliances bearing this emblem may be financed at low terms on the Electric Home and Farm Authority finance plan."

and emblem advertising in the show windows of respondent company, and its emblem advertising in the newspapers of the State have constantly carried the above statement at the request of the EHFA.

Respondent company admits that the TVA-EHFA program of advertisement is indicated and required by the said dealer contracts, under the following clause of the contract:

> "8. We shall be permitted, in connection with the sale of approved appliances, to use your insignia, subject to the following rules prescribed by you and such other rules as may hereafter subscribed by you.

"(a) We shall not place the insignia on any appliance or other article of any nature, and shall use the insignia only in connection with the advertising and selling of approved appliances upon which the insignia has been placed, with your consent, by the manufacturers of such approved appliances.

"(b) Whenever reproduced, the insignia, inclusive of the slogan, 'Electricity for All', shall conform in all particulars with sample copies thereof which shall be furnished by you upon request, except that it may be reproduced on a larger or smaller scale than said sample, and except further that if it is impractical to reproduce the color combination of the sample, the insignia may be reproduced in such color or colors as may be authorized by you. No other slogan or insignia shall be in any way physically associated with your insignia.

"(c) In advertising, selling, or inducing the sale of approved appliances, whether orally, in writing, or otherwise, it shall be clearly indicated by the use of the insignia where practicable, that such approved appliances have been approved by you.

"(d) You may at any time compel the cessation of any form of advertising or sales campaign in connection with such insignia or any appliance bearing such insignia which you deem unfair, undesirable or detrimental.

"(e) We shall assist in preventing misuse of the insignia by manufacturers or any other persons.'

Respondent company is required by Article 15 of the agency contract at its own expense and without cost to the appliance purchaser to install inside wiring for all approved ranges and water heaters and inside piping of water heaters for customers on respondent's line unless respondent does not approve the credit of the purchaser,

or does not believe the purchaser's residence is sufficiently permanent to justify the expense of the instalation or unless the cost of the instalation is more than $35.00 and purchaser is unwilling to pay the excess and respondent is required by said contract to obtain the consent of EHFA before refusing to make such instalation or for any other reason.

Respondent admits that merchandising and advertising matter is issued by EHFA and franked through the mails as government matter to customers of this company throughout the State of Alabama, and for that purpose the respondent company has supplied to EHFA the names of one-half of all its customers, or approximately 50,000 names, as a basis for a mailing list.

In carrying out this plan, respondent company states that through September 30, 1934, the following TVA appliances have been sold by it and as agent for EHFA it has also handled instalment paper for independent dealers as follows:

| | | | |
|---|---|---|---|
| Company sales— | 1,460 | units for | $127,897.44 |
| Dealer sales | 62 | units for | 4,999.84 |
| Total | 1,512 | units for | $132,897.28 |

In addition to the foregoing, various dealers throughout the state have sold other and additional TVA appliances for cash as to which this company has no record.

38. In answer to Paragraph 38 respondent company refers to and adopts the facts hereinabove set out in Paragraphs 17, 19 and 20 under which such respondent entered into the contracts of January 4 and August 9. Respondent company has heretofore set forth in its answer that it is unable to compete with the proposed rates of the Tennessee

Valley Authority; that in view of certain elements of cost to which TVA is not subjected, such as taxes, licenses and sub-normal interest charges, and to certain charges to other activities, such as navigation, flood control and national defense which it is authorized to make and deduct from the normal cost of water power developments, such rates as applied to the area served by this respondent are unfair and unjust.

As to the other facts averred in Paragraph 38, this respondent is not advised and neither admits nor denies the same.

39. In answer to Paragraph 39, respondent company admits that the most practical method by which the surplus power generated at Wilson Dam can be equitably distributed among the states, counties and municipalities within transmission distance and for the benefit of the people of the section as a whole is by distribution through facilities serving generally the described area; that this respondent, together with Georgia Power Company and The Tennessee Electric Power Company, serve generally or extensively the three states of Alabama, Georgia and Tennessee and have made public their willingness to purchase and distribute such energy equitably, their systems covering a large part of the area within transmission distance of Muscle Shoals. Respondent company avers that it is true that TVA would not consider a plan for such equitable distribution, as it preferred to set up its own distribution system and engage in direct service to the public. Respondent admits that the rates charged by TVA to its customers of various classes, and the rates to consumers permitted by TVA contracts with the municipalities and other distributing customers, are substantially lower than the rate which is possible for this respondent to charge distributors and consumers, re-

spectively, in the area of its service, without substantial deficits under a fair return on prudent investment and substantial impairment of its reasonable earnings. By the contract of January 4 TVA required the Tennessee Electric Power Company to introduce in its service area the domestic rate schedules long since in effect with respondent company, such schedules having been expressly approved by TVA for the EHFA appliance promotion program. Respondent is not advised as to other facts averred in Paragraph 39 and neither admits nor denies the same.

40. In answer to Paragraph 40, respondent company admits that its rates which are in effect throughout Alabama have for many years been based on uniformity in all communities served, without reference to the origin of the power transmitted, that such rates have been required or expressly approved by the Alabama Public Service Commission since jurisdiction to regulate electric utilities was conferred upon such Commission in 1920, and that it is very probable that the rates proposed to be put into effect in TVA territory will create dissatisfaction among the customers being served by respondent's remaining system, resulting in direct injury to respondent as a result of this competitive situation. Respondent says that it is not advised as to the remaining averments of Paragraph 40 and neither admits nor denies the same.

41. In answer to Paragraph 41, respondent company admits that the averments of fact therein stated are substantially correct.

42. In answer to Paragraph 42, respondent company admits that the averments of fact therein stated are substantially correct.

43. In answer to Paragraph 43, respondent company ad-

mits that the averments of fact therein stated are substantially correct.

43-a. In answer to Paragraph 43-a, respondent company says that it is not advised as to the averments thereof and neither admits nor denies the same.

44. In answer to Paragraph 44, respondent company says that the facts with reference to the sale of its properties to TVA are set out in Paragraph 17, 19 and 20 of this answer.

44-a. In answer to Paragraph 44-a, respondent company says that one of the effects of the exchange feature of the contract of January 4 is to place respondent company in a position of standby service to TVA and thus greatly decrease the service interruptions which would otherwise result on TVA's system if the latter were operated without such standby service. The other terms of the contract are set out as Exhibit No. 5 and speak for themselves. Respondent company says that it is not advised as to the remaining averments in Paragraph 44-a and neither admits nor denies the same.

45. In answer to Paragraph 45 respondent company says that the price fixed in the contract of January 4 does not contemplate payment to respondent company for any other elements of value than as set out in such contract. As to the averment of duress respondent company says that it has set out in Paragraphs 17, 19 and 20 the facts relating to the sale of its properties to TVA and adopts such facts in answer to such averment in this Paragraph 45. Respondent company says that it is not advised as to the other averments of Paragraph 45 and neither admits nor denies the same.

46. In answer to Paragraph 46, respondent company admits to be true the averments contained therein.

47. In answer to Paragraph 47, respondent neither admits nor denies the same.

48. In answer to Paragraph 48, respondent company says that, except as to conclusions of law which are set out therein and which this respondent is advised it is not required to answer, this respondent says that it is not advised as to the averments thereof and neither admits nor denies the same.

49. In answer to Paragraph 49, respondent company says that except as to conclusions of law which are set out therein and which this respondent is advised it is not required to answer, this respondent says that the averments of Paragraph 49 are substantially correct.

50. In answer to Paragraph 50, respondent company states that the properties which it has agreed to convey to TVA include transmission lines, distribution systems, easements, rights of way, franchises and personal and real property located in part in Limestone County, Alabama, and in part in the other counties referred to in Exhibit No. 1.

Martin, Turner & McWhorter
Attorneys for Respondent
Alabama Power Company

## AMENDED ANSWER OF RESPONDENT ALABAMA POWER COMPANY

Filed January 25th, 1935,

In the District Court of the United States
For the Northwestern Division of the Northern District of Alabama.

George Ashwander, et al.,
Complainants,
v.
Tennessee Valley Authority, et al.,
Respondents.
In Equity No. 355

Comes Alabama Power Company, one of the defendants in the above entitled cause, and by leave of the court amends its answer heretofore filed by striking the first full paragraph of Section 19 of the answer and inserting in lieu thereof the following:

"19. As to paragraph 19, respondent company is advised that TVA in coordination with the Public Works Administration aided and encouraged various of the respondent municipalities to apply for and obtain approval of grants and loans of PWA funds to enable them to enter into the business of distributing TVA power within the area served by respondent company; respondent company denies that TVA in addition held out to this respondent the threat of direct construction and competitive operation, and in that connection avers that TVA gave this respondent to understand that if TVA could not acquire respondent company's property the result would be competitive operation; and that a number of such grants and

loans of PWA funds was formally or informally approved."

And further amends its answer by striking paragraph numbered 39 and inserting in lieu thereof the following:

"39. In answer to paragraph 39, respondent company admits that the most practical method by which the surplus power generated at Wilson Dam can be equitably distributed among the states, counties and municipalities within transmission distance and for the benefit of the people of the section as a whole is by distribution through facilities serving generally the described area; that this respondent, together with Georgia Power Company and the Tennessee Electric Power Company, serve generally or extensively the three states of Alabama, Georgia and Tennessee and have made public their willingness to purchase and distribute such energy equitably, their systems covering a large part of the area within transmission distance from Muscle Shoals. Respondent company avers that it is true that TVA would not consider a plan for such equitable distribution. Respondent admits that the rates charged by TVA to its customers of various classes, and the rates to consumers permitted by TVA contracts with the municipalities and other distributing customers, are substantially lower than the rates which are possible for this respondent to charge distributors and consumers, respectively, in the area of its service, without substantial deficits under a fair return on prudent investment and substantial impairment of its reasonable earnings. By the contract of January 4 TVA required The Tennessee Electric Power Company to introduce in its service area the domestic rate schedules long since in effect with respondent company, such schedules having been expressly approved by TVA for the EHFA appliance promotion program. Re-

spondent is not advised as to other facts averred in paragraph 39 and neither admits nor denies the same."

Martin, Turner & McWhorter,
Attorneys for Respondent Alabama
Power Company

Within amendment to answer allowed to be filed this 25th day of January, 1935.

W. I. Grubb,
District Judge.

## ANSWER OF CHEMICAL BANK & TRUST COMPANY.

Filed December 15, 1934.

United States District Court for
the Northern District of Alabama

George Ashwander, et al,
Complainants,
—against—
Tennessee Valley Authority, et al,
Respondents.

To the Honorable, the Judges of the United States District Court for the Northern District of Alabama:

The answer of Chemical Bank & Trust Company, as Successor-Trustee, to the Bill of Complaint of George Ashwander, and others, by Stokely, Scrivner, Dominick & Smith, its solicitors, alleges upon information and belief, as follows:

(1) The respondent is without knowledge or information sufficient to form a belief as to the allegations contained in

Sections 1-50, inclusive of the said Bill of Complaint, except for the allegations contained in the following paragraphs or sections, which it answers seriatum:

(2) Admits the allegations contained in Paragraph 2 (f) and alleges that Chemical Bank & Trust Company is Successor-Trustee under indentures of mortgage of Alabama Power Company dated March 1, 1916 and June 1, 1921, under and by virtue of which there were issued and are now outstanding bonds of the Alabama Power Company in the principal amount, as follows:

> First Mortgage Thirty year 5% Gold Bonds due March 1, 1946, in the principal amount of $70,921,000, of which there are outstanding in the hands of the public $10,221,000; and the balance, $60,700,000 are pledged with the Trustee herein as collateral security for the payment of an issue of:
>
> 5% First Mortgage Lien and Refunding Gold Bonds issued under the Indenture of Mortgage dated June 1, 1921, maturing serially as follows:

| | |
|---|---|
| June 1, 1951 | $17,700,000 |
| November 1, 1956 | 6,000,000 |
| December 1, 1957 | 37,000,000 |
| | $60,700,000 |

Of the above two issues, there is now issued and outstanding and in the hands of the public, on the records of the Trustee, the total sum of $70,921,000 of said Gold Bonds.

That, to secure the payment of the said Bonds, the respondent Alabama Power Company executed and delivered its certain Indentures of Mortgage dated March 1, 1916 and June 1, 1921, conveying and granting to the United States Mortgage and Trust Company, as Trustee, certain desig-

nated properties and franchises including the properties and franchises set forth in the Bill of Complaint and the Contract dated January 4, 1934, Exhibit 1 attached to the said Bill of Complaint. The respondent, Chemical Bank & Trust Company is successor to United States Mortgage and Trust Company, Trustee, under said Indentures of Mortgage, by the merger of the latter with the former company.

The said Indentures of Mortgage are blanket mortgages covering all of the property and franchises of the Alabama Power Company mentioned therein, and provide that the Trustee may release from the lien of said indentures certain of the said properties for a consideration representing its full value to the Mortgagor, and that the proceeds of all property so released shall be paid over to the Trustee for the benefit of the bondholders.

The said Indentures of Mortgage provide, respectively, among other things, the following:

> (p. 9) That the Mortgagor * * * hath granted, bargained, sold, conveyed, assigned, transferred and confirmed, and by these presents doth grant, bargain, sell, convey, assign, transfer and confirm unto the Trustee, and its successor or successors and assigns forever, the following property—that is to say:
>
> (pp. 10 & 9) I.—The electric generating plants and stations of the Mortgagor, including all dams, power houses, buildings, reservoirs, pipe lines, flumes, structures and works, and the land on which the same are situated, and all water rights, and all other lands and easements, rights of way, permits, privileges, towers, poles, wires, machinery, equipment, appliances, appurtenances and supplies forming a part of said plants and stations, or any of them, or occupied, enjoyed or used in connection therewith, or adjacent thereto, including the following described property in the State of Alabama, namely:

(The mortgages then state ten separate and distinct parcels of property by metes and bounds.)

(pp. 14 & 20) II.—The electric transmission lines of the Mortgagor, including the towers, poles, pole lines, wires, switch racks, switch boards, insulators and other appliances and equipment, and all other property forming a part thereof, or appertaining thereto; together with all real property, rights of way, easements, permits, privileges, franchises and rights for or relating to the construction, maintenance or operation thereof, through, over, under or upon any public streets or highways, within as well as without the corporate limits of any municipal corporation, including the following described property in the State of Alabama, namely:

(The mortgages then set forth thirty separate and distinct transmission lines under the said paragraph) and continues,

(pp. 17 & 26) "Together with the following franchises and rights under which said transmission lines or any of them, are or may be constructed, operated and maintained:

(The mortgages then recite a large number of different franchises and rights granted by various Cities and Counties to Alabama Power Company).

(pp. 19 & 29). III.—The electric distributing systems of the Mortgagor, including substations, transformers, switchboards, towers, poles, wires, insulators, and other appliances and equipment and all other property, real or personal, forming a part of or appertaining to, or used, occupied or enjoyed in connection with the said distributing systems or any of them; together with all rights of way, easements, permits, privileges, franchises and rights in or relating to the construction, maintenance or operation thereof, through, over, under or upon any public streets or highways within as well as without the corporate limits of any

municipal corporation, including the following described property in the State of Alabama, namely:

(The mortgages then set forth a list containing thirty-two different distributing systems, with many subdivisions.)

(pp. 34 & 62). VII & VI.—All the substations of the Mortgagor for transforming, distributing or otherwise regulating electric current at any of its plants, together with all buildings, transformers, wires, insulators, and other appliances and equipment, and all other property, real or personal, forming a part of or appertaining to or used, occupied or enjoyed, in connection with any of said substations, including, in addition to those already set forth, the following described property in the State of Alabama, namely:

(The Mortgages then set forth nine substations included under these paragraphs.)

(pp. 36-40 & 70-97). IX & VIII.—All other real property of the Mortgagor or interest therein, of any sort and description and wherever located, including, particularly the following dam sites located on the Coosa River in the State of Alabama:

(The Mortgages then set forth the 13 dam sites with many subdivisions and other lands covered by the said Mortgages.)

(pp. 42 & 102). X & IX.—Also all water powers, water rights, rights of flowage, and overflowage, rights of way, easements, water power sites, buildings, power houses, shops, power plants, substations, dynamos, generators, holders, retorts, apparatus, engines, machinery, boilers, fixtures, equipment, appliances, tools, conduits, flumes, ditches, ducts, pipes, receivers, headgates, dams, dam sites, sluices, reservoirs, water-works, hydrants, stand-pipes, implements, wires, posts, poles, pumps, tanks, meters, transformers, mains, cars, motors, overhead construction superstructures tracks,

rails and all property of any nature appertaining to any of the plants, properties, systems, business and operations of the Mortgagor, whether the same are now owned or may hereafter be acquired by the Mortgagor, or its successors or assigns, and wheresoever situate.

Clause Second.

Franchises and Contracts.

(pp. 42 & 103)

Also, all corporate and other franchises, ordinances, permits, licenses, rights, easements, rights of way, leases and leasehold interests, municipal and private contracts, grants, privileges and immunities, belonging to or which may be hereafter owned, held or enjoyed by the Mortgagor.

Clause Fourth.

Property Included.

(pp. 45-46 & 106)

Any and all property of every name and nature and wherever situate, now owned or hereafter acquired by the Mortgagor, except the property hereinafter expressly excluded.

Any and all property of every name and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred by the Mortgagor, or by any one in its behalf or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times, as and for additional security hereunder, and to hold and apply the same subject to the terms hereof.

It is the intention hereof to include herein all, except as hereinafter expressly provided, of the property of the Mortgagor, real, personal and mixed, in possession or expectancy, or both, now occupied, owned, possessed

or enjoyed or which may hereafter, in any wise, be acquired, owned, possessed or enjoyed by the Mortgagor or for the Mortgagor, together with all and singular the tenements, hereditaments, rights, easements, privileges, immunities and appurtenances, belonging to or in any wise appertaining to the Mortgagor or to such property hereby conveyed, transferred or assigned, or to any part thereof, and the reversion and reversions, remainder and remainders, rents income, revenues and profits thereof, and all the estate, right, title, interest, claims and demands whatsoever, at law as well as in equity, which the Mortgagor now has or may hereafter acquire in and to the aforesaid property and every part and parcel thereof.

(pp. 46, 47 & 107-108). To Have and to Hold the same, unto the Trustee, and its successor or successors and assigns forever;

In Trust Nevertheless, upon the terms and trusts herein set forth, for those who shall hold the bonds and coupons aforesaid, or any of them, without preference of any of said bonds over any others thereof by reason of priority in the time of the issue or negotiation thereof, or otherwise howsoever;

The above description of properties, franchises, rights, distributing systems, etc., includes the property proposed to be conveyed by the contract of January 4, 1934, Exhibit 1 attached to the Bill of Complaint, and the property referred to and set forth in the said Bill of Complaint.

The said Indentures of Mortgage also provide, so far as material to the matters set forth in the Bill of Complaint, for the sale, exchange or release of any of the mortgaged property, upon the mortgagor complying with certain conditions contained in the mortgage; to wit, that the mortgagor shall show that the consideration for the property to be sold and released represents its full value and

file with the Trustee an opinion of counsel, in case the Trustee is requested to release any franchise, that such release will not impair the right of the mortgagor to operate any of its remaining property and franchises, and that if the purchaser is a Municipality or other public authority, that it has the right to purchase the said mortgaged property.

(6) Admits the allegations contained in Paragraph 6 of the Complaint, and prays that the Court herein will protect the security of the said mortgages for the full value thereof on each of the said properties and franchises, tangible, intangible, and otherwise, intended to be conveyed by the said contract of January 4, 1934, Exhibit 1, attached to the Bill of Complaint.

(25) If, as alleged in Paragraph 25 of the Bill of Complaint, the illegal acts complained of have resulted in the Alabama Power Company contracting to sell its properties and franchises for a grossly inadequate and insufficient consideration, to wit, $1,783,643.63, less than the book value of said properties and franchises and they are so sold and conveyed, then the security held by the respondent as Trustee will be seriously impaired and damaged, and respondent prays that this Court will fix the fair market value of said properties and franchises, including the direct and severance damage to the whole system as a result of the said taking by the Tennessee Valley Authority.

If, as alleged in the Bill of Complaint, the threatened acts and their continuance would result in the loss of the properties, franchises, distributing systems, etc., of the Alabama Power Company, then the security relied upon by many innocent purchasers of the bonds herein referred to, who have invested millions of dollars in reliance thereon, is threatened with loss and destruction.

(44) This respondent urges, as alleged in Paragraph 44 of the Bill of Complaint, that due process of law and every access to the Court be preserved and every facility be accorded for the consideration of the grave question of public interest therein set out; and that the threatened destruction of the property of the Alabama Power Company without due process of law, and the taking of its property and business without just compensation, be prohibited.

(45) This respondent urges that if the allegations set forth in paragraph 45 of the Bill of Complaint are found by this Court to be true, that then an adequate consideration be required to be paid for the intangibles included and to be conveyed by the agreement of January 4, 1934, Exhibit 1 attached to the Bill of Complaint, as the liens of the mortgages above referred to include the said intangibles and any consideration which does not include an adequate payment for such intangibles would not be payment of full value in accordance with the terms of the said Indentures of Mortgage.

(51) Further answering the allegations of the said Bill of Complaint, the respondent alleges upon information and belief:

That on or about the 15th day of August, 1934, the Alabama Power Company requested this respondent to release certain of the said properties and on or about the 5th day of November 1934 requested the release of certain other properties upon payment to the respondent of part of the consideration mentioned in the said contract, Exhibit 1 attached to the Bill of Complaint. The respondent received letters from a bondholder opposing the sale of the said properties, asserting that the consideration to be paid therefor is inadequate, and would result in a loss to the Alabama Power Company of $2,000,000.

Subsequent thereto and on or about the 15th day of November 1934, the respondent herein was served with a subpoena and citation issued out of this Court, by service upon its resident agent within the State of Alabama and made a party to this suit. It was served with the Bill of Complaint herein alleging the inadequacy of the consideration for the conveyance of the said properties; that the said contract of January 4, 1934 was not the voluntary act of the Alabama Power Company; and other illegal acts and deeds which it is alleged makes the said contract illegal and of no binding force upon the Alabama Power Company.

After being made a party to the said litigation and the receipt of the said Bill of Complaint, the Tennessee Valley Authority also made requests and demands upon this respondent to immediately deliver the said releases, so that they could complete the said purchase before any further suits were filed to prevent the completion of the said purchase by the Tennessee Valley Authority.

By reason of the allegations and charges contained in the said Bill of Complaint, and of notice thus being given to the respondent that the consideration for which the said property was proposed to be released is inadequate and considerably less than the value of the said properties and franchises, and that such consideration does not include payment for franchises, intangibles, nor severance damage; this respondent requested the Alabama Power Company, as permitted by the said Indentures of Mortgage, to furnish it with an independent appraisal showing what is the full value of the said properties and franchises proposed to be released from the lien of said mortgages.

That if said contract of January 4, 1934, is not a voluntary contract, but was induced by fear and duress and is illegal and fixed the values of the said properties and

franchises at less than their fair market values, then the said illegal acts prejudice the value of the security of the mortgages on the said properties and diminish the value thereof by the amount of the understatement of value. If said alleged illegal acts exist and are permitted to continue, then the lien of the mortgages of all of the properties of the Alabama Power Company, of which this respondent is Trustee, are likely to be injured and damaged to the detriment of many millions of dollars invested by innocent bondholders.

Wherefore, this respondent, Chemical Bank and Trust Company, as Trustee, prays that this Court

(1) Will prevent any illegal activities or acts as alleged in the Bill of Complaint which will depress or destroy the value of the mortgaged properties and franchises and thus injure the cestui que trust;

(2) Will prevent the taking of the properties and franchises of the Alabama Power Company without just compensation;

(3) Will prevent any illegal acts of the Tennessee Valley Authority and the Public Works Administration which tend to reduce or lessen the value of the other properties and franchises of the Alabama Power Company, and thus tend to damage and impair the lien of the mortgages on said properties and franchises, which are pledged to secure the bonds outstanding in the hands of innocent purchasers for value, the public, for which this respondent is Trustee;

(4) And will determine whether the public authority represented by the Tennessee Valley Authority has the legal right to acquire and purchase said properties so that this Trustee may not be put in a prejudicial position if said right does not exist;

(5) And further respectfully prays that this Court will protect and defend the security given by the lien of the said mortgages dated March 1, 1916 and June 1, 1921 on the said properties, and if the acts, or any of them, alleged in the Bill of Complaint are established as illegal, that it restrain them; and

(6) That this Court will find what is the fair market value of the said properties and franchises, tangible and intangible, including severance damages, proposed to be conveyed, for the protection of the bondholders and this Trustee; and

(7) If the sale or conveyance is approved in any form, direct the respondent Tennessee Valley Authority, the purchasers, to pay to Alabama Power Company for payment to this respondent the fair market value of the said properties, franchises, etc., proposed to be released from the lien of said mortgages; and

(8) Will enter such order and decree as will fully protect the respondent-Trustee of and from any and all claims and liability which may be asserted against it by reason of any of the matters and things alleged in the said Bill of Complaint or litigated in this action; and

(9) This respondent does forever pray for such other and further or different relief in the premises as may be just and equitable, and for its protection.

Respectfully submitted,

Chemical Bank & Trust Company,
By J. T. Stokely
Stokely, Scrivner, Dominick &
Smith, Solicitors.

J. T. Stokely
Courtland Palmer, Of Counsel.

## ANSWER OF DEFENDANTS TENNESSEE VALLEY AUTHORITY, ELECTRIC HOME AND FARM AUTHORITY, INC., ARTHUR E. MORGAN, HARCOURT A. MORGAN, AND DAVID E. LILIENTHAL.

Filed December 29, 1934.

In the United States District Court
For the Northeastern Division of the Northern
District of Alabama

George Ashwander, Et Al
Plaintiffs
Vs.
Tennessee Valley Authority Et Al.
Defendants
No. 355
In Equity

Answer

Now come defendants Tennessee Valley Authority, Electric Home and Farm Authority, Inc., Arthur E. Morgan, Harcourt A. Morgan, and David E. Lilienthal, and severally answering the bill of complaint herein, say:

I.

1. Defendants are without knowledge as to the shareholdings of plaintiffs or the manner or purpose of their acquisition of any such holdings or the consideration paid therefor. Defendants admit the other allegations of Section (1).

2. Defendants deny the material allegations of Section (2).

3. (a) Defendants admit the allegations of Section (3) (a).

(b) Defendants admit the allegations of the first paragraph of Section (3) (b). Answering the second paragraph of Section (3) (b) defendants deny that defendant Tennessee Valley Authority is a foreign corporation within the meaning of the constitution of Alabama (1901), or that the sections of the Code of Alabama cited in said paragraph are applicable to it. Defendants deny all other allegations of Section (3) (b).

(c-g) Defendants deny that the defendant Electric Home and Farm Authority, Inc. is doing business within the State of Alabama. Except as so denied, defendants admit the material allegations of Sections (3) (c), (3) (d), (3) (e), (3) (f), and (3) (g).

4. Defendants are without knowledge as to the allegations of Section (4).

5. Defendants deny the allegations of the last paragraph of Section (5), and are without knowledge as to any material allegations in the remainder of said section.

6. Defendants do not have adequate knowledge as to the various allegations of Section (6), but are informed that the same are substantially correct and insofar as material to this particular case, waive proof thereof.

7. Defendants admit that Alabama Power Company is a subsidiary of the Commonwealth and Southern Corporation but are without knowledge as to the other allegations of Section (7).

8. Defendants admit that Alabama Power Company, Georgia Power Company, South Carolina Power Company, Tennessee Electric Power Company and Mississippi Power Company are subsidiaries of the Commonwealth and Southern Corporation. Except as so admitted, defendants deny the allegations of Section (8).

9. Defendants deny the allegations of Section (9).

10. Defendants deny the allegations of Section (10). The purposes of the Tennessee Valley Authority Act are as set forth therein.

11. Defendants deny the allegations of Section (11).

12. Defendants deny the allegations of Section (12).

13. Defendants deny the allegations of Section (13).

14. Defendants deny the allegations of Section (14).

15. Defendants deny the allegations of Section (15).

16. Defendants deny the allegations of Section (16).

17. Defendants deny the allegations of Section (17).

18. Defendants deny the allegations of Section (18).

19. Defendants deny the allegations of Section (19).

20. Defendants admit that the Alabama Power Company and the Tennessee Valley Authority entered into a certain contract under date of January 4, 1934, a copy of parts of which is attached to the bill of complaint and marked Exhibit No. 5. Except as so specifically admitted, defendants deny the allegations of Section (20).

21. Defendants admit the execution by the Tennessee Valley Authority and the Alabama Power Company of a certain agreement, a copy of which is attached to the bill of complaint and marked Exhibit No. 5-A. Except as so specifically admitted, the defendants deny the allegations of Section (21).

22. Defendants deny the allegations of Section (22).

23. Defendants admit that the Alabama Power Company, pursuant to contract, applied to the Alabama Public Service Commission and that certain proceedings took place as set forth in Docket No. 6604 of the Commission. Defendants admit the allegations of the third paragraph of Section (23), and the making of a certain order and a certain

supplemental order, portions of which are quoted in said section. Defendants admit the allegations of the last two paragraphs of Section (23), and by way of explanation, allege that the transfers in question have been duly approved by the Alabama Public Service Commission. By way of further explanation, defendants allege that they have the right to cancel the contract of August 9, 1934. Except as so specifically admitted or explained, defendants deny the allegations of Section (23).

24. Defendants deny the allegations of Section (24).

25. Defendants deny the allegations of Section (25).

26. Defendants deny the allegations of Section (26).

27. Defendants deny the allegations of Section (27).

28. Defendants deny the allegations of Section (28).

29. Defendants deny the allegations of Section (29).

30. Defendants deny the allegations of Section (30).

31. Defendants deny the allegations of Section (31).

32. Defendants deny the allegations of Section (32).

33. Defendants deny the allegations of Section (33).

34. Defendants deny the allegations of Section (34).

35. Defendants deny the allegations of Section (35).

36. Defendants deny the allegations of Section (36).

37. Defendants admit that the defendant Electric Home and Farm Authority, Inc., has entered into a certain contract with the Alabama Power Company, copy of which is attached to the bill of complaint, and marked Exhibit No. 10, and that operations have taken place pursuant thereto. Except as so specifically admitted, defendants deny the allegations of Section (37).

38. Defendants deny the allegations of Section (38).

39. Defendants deny the allegations of Section (39).

40. Defendants deny the allegations of Section (40).

41. Defendants deny the allegations of Section (41).

42. Defendants deny the allegations of Section (42).

43. Defendants deny the allegations of Section (43).

43-a. Defendants admit that the City of Athens is the only one of defendant cities which owns its electric distribution system. Except as so specifically admitted, defendants deny the allegations of Section (43-a).

44. Defendants deny the allegations of Section (44).

44-a. Defendants deny the allegations of Section (44-a).

45. Defendants admit that the statement quoted in Section (45) was made by defendant Lilienthal. Except as so specifically admitted, defendants deny the allegations of Section (45).

46. Defendants are without knowledge as to the allegations of Section (46).

47. Defendants deny the allegation of Section (47) and allege that if plaintiffs can assert any cause of action, they have an adequate remedy at law.

48. Defendants deny the allegations of Section (48).

49. Defendants deny the material allegations of Section (49).

50. Defendants admit that certain of the properties involved constitute real property situated in Limestone County and certain other counties referred to in Exhibit No. 1 to the bill of complaint. Except as so specifically admitted, defendants deny the allegations of Section (50).

II.

Further answering the bill as a whole and by way of a separate defense thereto, defendants allege:

(a) Plaintiffs fail to state a cause of action;

(b) The bill of complaint fails for lack of equity;

(c) Plaintiffs are not proper parties in interest;

(d) The bill is so multifarious, impertinent, redundant, verbose, and confusing as to jeopardize the substantial rights of the defendants and as to prevent their adequately determining the issues of the case for the purpose of preparing and presenting their defense.

Wherefore, defendants pray that an order be made herein dismissing the bill of complaint with costs.

James Lawrence Fly
Wm. C. Fitts, Jr.
Solicitors for Defendants
Tennessee Valley Authority,
Electric Home and Farm Authority Inc.,
Arthur E. Morgan,
Harcourt A. Morgan and
David E. Lilienthal.

## AMENDED AND SUPPLEMENTAL ANSWERS OF DEFENDANTS.

Filed in open Court,
this January 25th, 1935,
W. I. Grubb, District Judge.

In the United States District Court
For the Northeastern Division of the Northern District of Alabama

George Ashwander, et al
Plaintiffs
vs.
Tennessee Valley Authority, et al
Defendants
No. 355
In Equity

Now come the defendants, Tennessee Valley Authority, Electric Home and Farm Authority, Inc., Arthur E. Morgan, Harcourt A. Morgan and David E. Lilienthal and by leave of Court first had and obtained, file this amended and supplemental answer to the answer to the bill of complaint heretofore filed.

For other and special defense to all of those portions of the bill of complaint that relate to the contract between the defendant, Tennessee Valley Authority and Alabama Power Company, dated August 9, 1934, by the terms of which Alabama Power Company agreed to sell to Tennessee Valley Authority certain electric distribution properties particularly described in said contract and in the bill of complaint, the defendants state the following facts:

In Section Three of said contract of August 9, 1934, there is the following provision: "In the event all said releases

from the liens of said Indentures of Mortgage shall for any reason not be ready and available for delivery within sixty (60) days from the purchase date or from the date of approval of the Commission, whichever is of later date, then in such case the Vendee shall be under no obligation to purchase said Property, notwithstanding its election to exercise this option." The "Commission" referred to in said Section is the Alabama Public Service Commission and the defendants allege that on to-wit the 24th day of November, 1934, said commission entered an order approving the contract of August 9, 1934 and the sale provided for thereunder, and that said date of November 24, 1934 was of later date than the purchase date provided in said contract of August 9, 1934. The defendants further allege that more than sixty days have elapsed since the order of approval by said commission and that the Indentures of Mortgage referred to in said contract are not ready or available for delivery and have not been delivered to the Vendee, Tennessee Valley Authority. The defendants further allege that pursuant to the right conferred upon it by said Section Three of the contract of August 9, 1934, the defendant, Tennessee Valley Authority, has formally notified the Vendor, Alabama Power Company, that it is no longer under any obligation to purchase the properties described and referred to in said contract, that it has no intention of purchasing same and that it has definitely and finally exercised its right to repudiate, abrogate and/or rescind any or all of its obligations under said contract of August 9, 1934.

The defendants further allege that the defendant, Tennessee Valley Authority, now has no intention or desire to perform said contract of August 9, 1934 and does not intend to purchase the property described and referred to

in said contract, either under the terms of that contract or any other terms, and does not intend to purchase from the defendant, Alabama Power Company, the distribution system referred to in said contract, or to acquire and/or operate such distribution systems in any manner whatsoever. The defendant, Tennessee Valley Authority, is informed and believes and so alleges that the defendant municipalities either have already or are preparing to rescind and revoke the resolutions heretofore adopted by them approving the plan of the defendant, Tennessee Valley Authority, to purchase said distribution systems and that said defendant municipalities are now definitely planning and preparing to procure the necessary funds to either purchase the existing distribution systems in such municipalities for themselves or to construct their own distribution systems.

The defendants therefore allege that all of the allegations of the original bill of complaint that relate to the said contract of August 9, 1934 or to the alleged plan of the defendant, Tennessee Valley Authority, to acquire and operate retail electric distribution systems in the various towns and cities mentioned in the bill of complaint present no questions within the jurisdiction of this Court since all questions relating to the right and/or power of the defendant, Tennessee Valley Authority, to acquire by purchase or otherwise and to operate such retail distribution systems are now abstract and moot and therefore not within the proper jurisdiction of this Court.

Wherefore the defendants pray that the Court will enter an order allowing the defendants to file this amended and supplemental answer and will consider the facts stated

herein as if they had been fully set out in the original answer filed by these defendants.

James Lawrence Fly
William C. Fitts, Jr.
Solicitors for Defendants, Tennessee Valley Authority, Electric Home and Farm Authority, Inc., Arthur E. Morgan, Harcourt A. Morgan and David E. Lilienthal.

Leave to file granted, with the reservation to the plaintiff to move to strike the supplemental answer from the file, if so advised, within 3 days from notice of filing.

Given this January 25, 1935.

W. I. Grubb,
District Judge.

## ANSWER OF CITY OF FLORENCE

Filed January 2, 1935,

In the District Court of the United States
For the Northwestern Division of the Northern
District of Alabama

George Ashwander, William Browder et als,
Complainants

—vs—

Tennessee Valley Authority, a corporation, City of Florence, a corporation, et als.,
Defendants

In Equity

Comes now defendant City of Florence, and answering the original bill in this cause, alleges and shows unto the court as follows, to-wit:

1. Defendant has no knowledge as to the allegations in the first section of the bill, and requires strict proof.

2. Defendant has no knowledge as to the allegations in the second section of the bill, and requires strict proof.

3. Defendant admits the allegations of section three of the bill. As to the allegations of 3b. of the bill, defendant is not advised and requires strict proof. Defendant admits the allegations of Sections c, d, e, f and g of Section 3 of the bill.

4. Defendant is not informed as to the allegations of Section 4 of the bill and requires strict proof.

5. and 6. Defendant admits the allegations of Section 5 and 6 of the bill.

7. and 8. Defendant is not advised as to the allegations in 7 and 8 of the bill, and denies them and requires strict proof.

9, 10, 11, 12, 13. Defendant is not informed as to the truth of the allegations of Sections 9, 10, 11, 12 and 13 of the bill, and requires strict proof.

14. Defendant denies the allegations of Section 14 of the bill.

15, 16, 17. Defendant denies the allegations of Section 15, 16 and 17 of the bill.

18, 19, 20. Defendant denies the allegations of Section 18, 19 and 20 of the bill, and requires strict proof.

21 and 22. Defendant denies the allegations of Sections 21 and 22 of the bill, and requires strict proof.

23. Defendant denies the allegations of Section 23, and requires strict proof.

24. Defendant denies the allegations of Section 24, and requires strict proof.

25. Defendant denies the allegations of Section 25, and requires strict proof.

26. Defendant denies the allegations of Section 26, and requires strict proof.

27. Defendant denies the allegations of Section 27 of the bill, and requires strict proof.

28. Defendant denies the allegations of Section 28 of the bill, and requires strict proof.

29. Defendant denies the allegations of Section 29 of the bill, and requires strict proof.

30. Defendant denies the allegations of Section 30 of the bill, and requires strict proof.

31 and 32. Defendant denies the allegations of Sections 31 and 32, and requires strict proof.

33. Defendant denies the allegations of Section 33 of the bill, and requires strict proof.

34. Defendant denies the allegations of Section 34 of the bill, and requires strict proof.

35 and 36. Defendant denies the allegations of Sections 34 and 35 of the bill, and requires strict proof.

37. Defendant denies the allegations of Section 37 of the bill, and requires strict proof.

38. Defendant denies the allegations of Section 38 of the bill, and requires strict proof.

39. Defendant denies the allegations of Section 39 of the bill, and requires strict proof.

40. Defendant denies the allegations of Section 40 of the bill, and requires strict proof.

41. Defendant denies the allegations of Section 41 of the bill, and requires strict proof.

42. Defendant denies the allegations of Section 42 of the bill, and requires strict proof.

43. Defendant denies the allegations of Section 43 of the bill, and requires strict proof.

43-A. Answering Section 43-A. of the bill, this defendant says that it is not advised as to the status of the power business of the City of Athens, Alabama. Defendant admits that it has entered into certain tentative proposals and arrangements with the Tennessee Valley Authority looking to the supply of electric power to the City of Florence by the said Authority. It is not proposed, however, that the City of Florence contract away its police power, and the proposed business in so far as the City of Florence

is concerned does not relieve the State of Alabama of its essential authority to control the power rates within the City of Florence and its police jurisdiction.

Neither Alabama Power Company nor any other corporation has an existing franchise for the distribution of power to the City of Florence.

This defendant denies that there is anything illegal, wrongful, ultra vires or contrary to public good in the proposed business between the City of Florence and the Tennessee Valley Authority.

44. and 44-A. Defendant denies the allegations of Section 44 and 44-A, and requires strict proof.

45. Defendant denies the allegations of Section 45, and requires strict proof.

46. Defendant denies the allegations of Section 46 of the bill, and requires strict proof.

47. Defendant denies the allegations of Section 47 of the bill, and requires strict proof.

48. Defendant denies the allegations of Section 48 of the bill, and requires strict proof.

Further answering the bill as a whole, this defendant alleges unto the court:

A. Alabama Power Company has engaged in the power business in Florence, Alabama, under a franchise granted to the Sheffield Company, and the said franchise expired in, to-wit, March, 1933. Subsequent to the expiration of said franchise the City of Florence by public vote declared its purpose and intention to engage in the power business under the laws in such cases made and provided. Active preparations to that end have since been made by the City of Florence.

B. The proposed action of the Alabama Power Company in selling its Florence, Alabama properties to Tennessee Valley Authority can serve nothing except the beneficial interests of complainants in this cause. Unless said Power Company shall sell its Florence properties such properties will have a wreckage value only. The only market for such properties is to the City of Florence, whether directly or through the interim purchase by the Tennessee Valley Authority. A refusal of such sale would result in the construction of new power facilities in the City with no business to be transacted over the old system.

C. In the belief of this defendant, the proposed contract terms between Tennessee Valley Authority and Alabama Power Company are fair, substantial and reasonable.

And having fully answered, defendant City of Florence prays that it may go hence with its reasonable cost.

W. H. Mitchell
Solicitor for Defendant City of
Florence.

## ANSWER OF CITIES OF SHEFFIELD AND TUSCUMBIA

Filed December 29, 1934

In the District Court of the United States

For the Northwestern Division of the Northern District of Alabama

George Ashwander, William Browder et als,

Complainants

vs.

Tennessee Valley Authority, a corporation, Cities of Sheffield and Tuscumbia, corporations, et als.,

Defendants

### In Equity

Come now defendants Cities of Sheffield and Tuscumbia, and answering the original bill in this cause, allege and show unto the court as follows, to-wit:

1. Defendant has no knowledge as to the allegations in the first section of the bill, and requires strict proof.

2. Defendant has no knowledge as to the allegations in the second section of the bill, and requires strict proof.

3. Defendant admits the allegations of section three of the bill. As to the allegations of 3b. of the bill, defendant is not advised and requires strict proof. Defendant admits the allegations of Sections c, d, e, f and g of Section 3 of the bill.

4. Defendant is not informed as to the allegations of Section 4 of the bill and requires strict proof.

5. and 6. Defendant is not informed as to the allegations of Section 5 and 6 of the bill.

7. and 8. Defendant is not advised as to the allegations

in 7 and 8 of the bill, and denies them and requires strict proof.

9, 10, 11, 12, 13. Defendant is not informed as to the truth of the allegations of Sections 9, 10, 11, 12 and 13 of the bill and requires strict proof.

14. Defendant denies the allegations of Section 14 of the bill.

15, 16, 17. Defendant denies the allegations of Section 15, 16 and 17 of the bill.

18, 19, 20. Defendant denies the allegations of Section 18, 19 and 20 of the bill, and requires strict proof.

21 and 22. Defendant denies the allegations of Sections 21 and 22 of the bill, and requires strict proof.

23. Defendant denies the allegations of Section 23, and requires strict proof.

24. Defendant denies the allegations of Section 24, and requires strict proof.

25. Defendant denies the allegations of Section 25, and requires strict proof.

26. Defendant denies the allegations of Section 26, and requires strict proof.

27. Defendant denies the allegations of Section 27 of the bill, and requires strict proof.

28. Defendant denies the allegations of Section 28 of the bill, and requires strict proof.

29. Defendant denies the allegations of Section 29 of the bill, and requires strict proof.

30. Defendant denies the allegations of Section 30 of the bill, and requires strict proof.

31 and 32. Defendant denies the allegations of Section 31 and 32, and requires strict proof.

33. Defendant denies the allegations of Section 33 of the bill, and requires strict proof.

34. Defendant denies the allegations of Section 34 of the bill, and requires strict proof.

35 and 36. Defendant denies the allegations of Sections 35 and 36 of the bill, and requires strict proof.

37. Defendant denies the allegations of Section 37 of the bill, and requires strict proof.

38. Defendant denies the allegations of Section 38 of the bill, and requires strict proof.

39. Defendant denies the allegations of Section 39 of the bill, and requires strict proof.

40. Defendant denies the allegations of section 40 of the bill, and requires strict proof.

41. Defendant denies the allegations of Section 41 of the bill, and requires strict proof.

42. Defendant denies the allegations of Section 42 of the bill, and requires strict proof.

43. Defendant denies the allegations of Section 43 of the bill, and requires strict proof.

43-A. Answering Section 43-A. of the bill, this defendant says that it is not advised as to the status of the power business of the City of Athens, Alabama. Defendant admits that it has entered into certain tentative proposals and arrangements with the Tennessee Valley Authority looking to the supply of electric power to the Cities of Sheffield and Tuscumbia by the said Authority. It is not proposed, however, that the Cities of Sheffield and Tuscumbia contract away its police power, and the proposed business in so far as the Cities of Sheffield and Tuscumbia are concerned does not relieve the State of Alabama of its essential authority to control the power rates within the

Cities of Sheffield and Tuscumbia and their police jurisdiction.

Neither Alabama Power Company nor any other corporation has an existing franchise for the distribution of power to the Cities of Sheffield and Tuscumbia.

This defendant denies that there is anything illegal, wrongful, ultra vires or contrary to public good in the proposed business between the Cities of Sheffield and Tuscumbia and the Tennessee Valley Authority.

44 and 44-A. Defendant denies the allegations of Section 44 and 44-A, and requires strict proof.

45. Defendant denies the allegations of Section 45, and requires strict proof.

46. Defendant denies the allegations of Section 46 of the bill, and requires strict proof.

47. Defendant denies the allegations of Section 47 of the bill, and requires strict proof.

48. Defendant denies the allegations of Section 48 of the bill, and requires strict proof.

Further answering the bill as a whole, this defendant alleges unto the Court:

A. Alabama Power Company has engaged in the power business in the Cities of Sheffield and Tuscumbia, Alabama, under a franchise granted to the Sheffield Company, and the said franchise expired in, to-wit, March, 1933. Subsequent to the expiration of said franchise the Cities of Sheffield and Tuscumbia by public vote declared their purpose and intention to engage in the power business under the laws in such cases made and provided. Active preparations to that end have since been made by the City of Sheffield and the City of Tuscumbia.

B. The proposed action of the Alabama Power Company

in selling Sheffield and Tuscumbia, Alabama, properties to Tennessee Valley Authority can serve nothing except the beneficial interest of complainants in this cause. Unless said Power Company shall sell its Sheffield and Tuscumbia properties, such properties will have a wreckage value only. The only market for such properties is to Tennessee Valley Authority, or the Cities of Sheffield and Tuscumbia, whichever may engage in the power business in said Cities. A refusal of such sale would result in the construction of new power facilities in the Cities with no business to be transacted over the old system.

C. In the belief of this defendant, the proposed contract terms between Tennessee Valley Authority and Alabama Power Company are fair, substantial and reasonable.

Stockton Cooke, Jr.
John E. Delony, Jr.
Solicitors for defendants Cities of Sheffield and Tuscumbia, Alabama.

## ANSWER OF TOWN OF ARDMORE ET AL.

Filed December 29, 1934

In the District Court of the United States
For the Northwestern Division of the Northern
District of Alabama

George Ashwander, William Browder et als,
Complainants

—vs—

Tennessee Valley Authority, a corporation, Towns of Ardmore, Austinville, Cherokee, Courtland, Elkmont, Falkville, Hartselle, Leighton, Moulton, Red Bay, Rogersville, Town Creek, and Cities of Decatur and Russellville, corporations, et als.,
Defendants

In Equity

Come now defendants Towns of Ardmore, Austinville, Cherokee, Courtland, Elkmont, Falkville, Hartselle, Leighton, Moulton, Red Bay, Rogersville, Town Creek and Cities of Decatur and Russellville, and answering the original bill in this cause, allege and show unto the Court as follows, to-wit:

1. Defendants have no knowledge as to the allegations in the first section of the bill, and require strict proof.

2. Defendants have no knowledge as to the allegations in the second section of the bill, and require strict proof.

3. Defendants admit the allegations of section three of the bill. As to the allegations of 3b. of the bill, defendants are not advised and require strict proof. Defendants admit the allegations of Section c, d, e, f and g of Section 3 of the bill.

4. Defendants are not informed as to the allegations of Section 4 of the bill and require strict proof.

5 and 6. Defendants admit the allegations of Section 5 and 6 of the bill.

7 and 8. Defendants are not advised as to the allegations in 7 and 8 of the bill, and deny them and require strict proof.

9, 10, 11, 12, 13. Defendants are not informed as to the truth of the allegations of Sections 9, 10, 11, 12, and 13 of the bill, and require strict proof.

14. Defendants deny the allegations of Section 14 of the bill.

15, 16, 17. Defendants deny the allegations of Section 15, 16 and 17 of the bill.

18, 19, 20. Defendants deny the allegations of Section 18, 19 and 20 of the bill, and require strict proof.

21 and 22. Defendants deny the allegations of Sections 21 and 22 of the bill, and require strict proof.

23. Defendants deny the allegations of Section 23, and require strict proof.

24. Defendants deny the allegations of Section 24, and require strict proof.

25. Defendants deny the allegations of Section 25, and require strict proof.

26. Defendants deny the allegations of Section 26, and require strict proof.

27. Defendants deny the allegations of Section 27 of the bill, and require strict proof.

28. Defendants deny the allegations of Section 28 of the bill, and require strict proof.

29. Defendants deny the allegations of Section 29 of the bill, and require strict proof.

30. Defendants deny the allegations of Section 30 of the bill, and require strict proof.

31 and 32. Defendants deny the allegations of Sections 31 and 32, and require strict proof.

33. Defendants deny the allegations of Section 33 of the bill, and require strict proof.

34. Defendants deny the allegations of Section 34 of the bill, and require strict proof.

35 and 36. Defendants deny the allegations of Sections 35 and 36 of the bill, and require strict proof.

37. Defendants deny the allegations of Section 37 of the bill, and require strict proof.

38. Defendants deny the allegations of Section 38 of the bill, and require strict proof.

39. Defendants deny the allegations of Section 39 of the bill, and require strict proof.

40. Defendants deny the allegations of Section 40 of the bill, and require strict proof.

41. Defendants deny the allegations of Section 41 of the bill, and require strict proof.

42. Defendants deny the allegations of Section 42 of the bill, and require strict proof.

43. Defendants deny the allegations of Section 43 of the bill, and require strict proof.

43-A. Answering Section 43-A. of the bill, these defendants say that they are not advised as to the status of the power business of the City of Athens, Alabama. Defendants admit that they have entered into certain tentative proposals and arrangements with the Tennessee Valley Authority looking to the supply of electric power to the Towns of Ardmore, Austinville, Cherokee, Courtland, Elkmont, Falkville, Hartselle, Leighton, Moulton, Red Bay, Rogersville, Town Creek and Cities of Decatur and Russell-

ville by the said Authority. It is not proposed, however, that the Towns of Ardmore, Austinville, Cherokee, Courtland, Elkmont, Falkville, Hartselle, Leighton, Moulton, Red Bay, Rogersville, Town Creek and Cities of Decatur and Russellville contract away their police power, and the proposed business in so far as the Towns of Ardmore, Austinville, Cherokee, Courtland, Elkmont, Falkville, Hartselle, Leighton, Moulton, Red Bay, Rogersville, Town Creek and Cities of Decatur and Russellville are concerned does not relieve the State of Alabama of its essential authority to control the power rates within the Towns of Ardmore, Austinville, Cherokee, Courtland, Elkmont, Falkville, Hartselle, Leighton, Moulton, Red Bay, Rogersville, Town Creek and Cities of Decatur and Russellville and their police jurisdiction.

These defendants deny that there is anything illegal, wrongful, ultra vires or contrary to public good in the proposed business between the Towns of Ardmore, Austinville, Cherokee, Courtland, Elkmont, Falkville, Hartselle, Leighton, Moulton, Red Bay, Rogersville, Town Creek and Cities of Decatur and Russellville and the Tennessee Valley Authority.

44 and 44-A. Defendants deny the allegations of Section 44 and 44-A, and require strict proof.

45. Defendants deny the allegations of Section 45, and require strict proof.

46. Defendants deny the allegations of Section 46 of the bill, and require strict proof.

47. Defendants deny the allegations of Section 47 of the bill, and require strict proof.

48. Defendants deny the allegations of Section 48 of the bill, and require strict proof.

Further answering the bill as a whole, these defendants allege unto the Court:

A. The proposed action of the Alabama Power Company in selling its Ardmore, Austinville, Cherokee, Courtland, Elkmont, Folkville, Hartselle, Leighton, Moulton, Red Bay, Rogersville, Town Creek, Decatur and Russellville properties to Tennessee Valley Authority can serve nothing except the beneficial interest of complainants in this cause. Unless said Power Company shall sell its Ardmore, Austinville, Cherokee, Courtland, Elkmont, Folkville, Hartselle, Leighton, Moulton, Red Bay, Rogersville, Town Creek, Decatur, and Russellville properties such properties will have a wreckage value only. The only market for such properties is to Tennessee Valley Authority, or the Towns of Ardmore, Austinville, Cherokee, Courtland, Elkmont, Folkville, Hartselle, Leighton, Moulton, Red Bay, Rogersville, Town Creek, and Cities of Decatur and Russellville, whichever may engage in the power business in said city. A refusal of such sale would result in the construction of new power facilities in these Towns and Cities with no business to be transacted over the old system.

B. In the belief of these defendants, the proposed contract terms between Tennessee Valley Authority and Alabama Power Company are fair, substantial and reasonable.

Stockton Cooke, Jr.
John E. Delony, Jr.
Solicitors for defendants
Towns of Ardmore, Austinville, Cherokee, Courtland, Elkmont, Folkville, Hartselle, Leighton, Moulton, Red Bay, Rogersville, Town Creek, and Cities of Decatur and Russellville, Alabama.

## MOTION FOR TEMPORARY RESTRAINING ORDER

Filed January 9th, 1935.

In the United States District Court
For the Northeastern Division of the Northern District of Alabama.

George Ashwander, et al,
vs.
Tennessee Valley Authority, et al.

No. 355
In Equity

Come the plaintiffs, and show to the Court that heretofore on, to-wit, the 3rd day of January, 1935, they gave notice to counsel for the respective defendants in this cause that they would on this date ask an order of this Court allowing the amended and supplemental bill herein in the form of the amended and supplemental bill this day filed, copies of which were served with said notice.

Plaintiffs respectfully aver that for the reasons set forth in said amended and supplemental bill, which was duly verified by affidavit, in addition to the reasons set forth in the original bill, it is necessary that a temporary injunction or restraining order issue, enjoining and restraining the defendant municipalities other than the City of Athens, from accepting loans and grants from Public Works Administration for the purpose of constructing a competitive electric distribution system for the distribution of Tennessee Valley Authority current, all as more fully prayed in and by said amended and supplemental bill so served as aforesaid.

Wherefore, plaintiffs pray that this Court enter a formal

order allowing the said amended and supplemental bill of complaint herein, and enjoining the said defendant municipalities as aforesaid, and for such other, further or different relief as may seem appropriate.

Respectfully submitted,

(Sgnd) Cabaniss & Johnston
Cabaniss & Johnston
Solicitors for Plaintiffs.

## TEMPORARY RESTRAINING ORDER

Filed January 9th, 1935,

In the United States District Court
For the Northeastern Division of the Northern District of Alabama.

George Ashwander, et al,
vs.
Tennessee Valley Authority, et al.
} No. 355 In Equity

This cause came on to be heard upon application of the plaintiffs for an order allowing the amendment of the bill of complaint and the filing of supplemental bill as per application and verified amended and supplemental bill this day filed, and it appearing that notice of the intention to apply for an order allowing said pleading, accompanied by a copy thereof, was given to the defendants or their counsel of record five days or more before this date, and the defendants all having appeared by counsel and objection being made to the order allowing the amendment on behalf of all of the defendants except Alabama Power Company, upon consideration,

It Is Adjudged, Ordered And Decreed that formal order allowing the amendment as an amended or supplemental bill of complaint is hereby reserved pending further determination by the Court as to whether the allowance thereof is reasonably necessary to effectuate the relief to which the plaintiffs may be entitled, and that pending action thereon and further order of this Court, the defendant municipalities (other than the City of Athens) be and each of them are hereby enjoined and restrained from accepting or entering into or executing a contract to accept any loan or grant from Federal Emergency Administration of Public Works or any other agency of the United States for the construction of a municipal electric distribution system, and to this order all of the defendants other than the City of Athens and Alabama Power Company, separately and severally except, and the defendants so restrained being present by counsel in open court, it is ordered that no further notice hereof be required other than the mailing of a copy of this order by the Clerk to counsel of record.

All parties, plaintiff and defendant, are further allowed the right, on one day's notice to other parties or their counsel, to apply for a modification of this order or for formal allowance of said amended and supplemental bill.

Given, this 9th day of January, 1935.

W. I. Grubb
U. S. District Judge

## STIPULATION AS TO DOCUMENTS

Filed in open Court this 30th day of January, 1935,
W. I. Grubb, District Judge.

In the United States District Court
For the Northeastern Division of the Northern District of Alabama

George Ashwander, et al.
Plaintiffs,
vs.
Tennessee Valley Authority, et al.,
Defendants.
No. 355
In Equity

The parties to the above styled cause, acting by and through their respective solicitors of record, do hereby stipulate and agree that, subject to legal objection upon any and all grounds except that of lack of proper authentication, documents and papers of the following specified classes and character may be offered in evidence by either party without further formal proof that they are what they purport to be:

House documents;
Senate documents;
Reports to the President of the United States by appointed committees;
Reports of or to Cabinet Officers of the United States;
Congressional hearings;
Reports of Congressional Committees;
Congressional records;
Reports and surveys of official research and investigating bodies of the various States of the United States;

All documents showing upon their face that they were printed by the Government Printing Office.

Cabaniss & Johnston
Solicitors for Plaintiffs
James Lawrence Fly
James Lawrence Fly, General Solicitor
Tennessee Valley Authority
Solicitor of Record for Defendants.

## MOTION OF CITY OF DECATUR TO DISSOLVE TEMPORARY RESTRAINING ORDER.

Filed January 30, 1935

In the United States District Court
For the Northeastern Division of the Northern District of Alabama

George Ashwander, et al,
Plaintiffs,
—vs.—
City of Florence
City of Sheffield
City of Tuscumbia, et al,
Defendants.

No. 355
In Equity

Now comes the defendant, Decatur, Alabama, a municipal corporation, by its solicitor, and moves the court to dissolve and vacate the temporary restraining order heretofore entered in this cause, on, to-wit, the 9th day of January, 1935, enjoining and restraining these and other defendants from accepting any loan or grant from the Federal Emergency Public Works Administration, and the defendant sets down and assigns the following grounds for said motion:

1. Said temporary restraining order was improvidently granted.

2. It does not appear by the bill that this defendant is about to conclude any loan or grant contract with the Federal Emergency Administration of Public Works.

3. It does not appear by the bill, as a matter of fact, that such loan or grant contract is or would be illegal.

4. The Federal Emergency Administration of Public Works is not a party to the bill.

5. The bill does not disclose by what right complainants seek equitable relief granted by way of the temporary restraining order.

6. The bill contains no prayer for relief granted by way of the temporary restraining order against the closing of a loan and grant between this defendant and the P. W. A.

7. The allegations of fact in the bill do not sustain the relief granted.

8. There is no equity in the bill.

9. Said temporary restraining order was granted without compliance with the statutory provisions governing such orders.

10. No injunction bond has been filed.

11. Said restraining order was granted without notice to this defendant, and without any showing by affidavit or verified bill that immediate and irreparable injury, loss or damage would result to plaintiffs before notice could be served and a hearing had.

12. Said restraining order does not define the injury and damage that would result to plaintiffs if it were not granted; does not state why such injury and damage would be irreparable; does not state why the order was granted

without notice, and does not fix by its own terms any date of expiration.

13. Said temporary restraining order is void for the reason that it is for an indefinite period of time and is conditioned upon further action of the court in violation of the terms of the statute.

14. Said temporary restraining order was improvidently granted for the reason that plaintiffs have no sufficient interest in the subject matter of the cause to maintain a suit for such an injunction.

The premises considered, defendant City of Decatur, a municipal corporation, prays that the court will enter an order dissolving and vacating said temporary restraining order.

W. H. Mitchell
Solicitor for City of Decatur,
a Municipal Corporation,
Defendant

## MOTION OF CITY OF FLORENCE TO DISSOLVE TEMPORARY RESTRAINING ORDER

Filed January 28th, 1935.

In the United States District Court
For the Northeastern Division of the Northern District of Alabama.

George Ashwander, et al.,
Plaintiffs.

vs.

City of Florence,
City of Sheffield,
City of Tuscumbia, et al.
Defendants.

No. 355—In Equity

Now comes the defendant, City of Florence, Alabama, a municipal corporation, by its solicitor, and moves the Court to dissolve and vacate the temporary restraining order heretofore entered in this cause, on to-wit, the 9th day of January, 1935, enjoining and restraining these and other defendants from accepting any loan or grant from the Federal Emergency Public Works Administration, and the defendant sets down and assigns the following grounds for said motion:

1. Said temporary restraining order was improvidently granted.

2. It does not appear by the bill that this defendant is about to conclude any loan or grant contract with the Federal Emergency Administration of Public Works.

3. It does not appear by the bill, as a matter of fact, that such loan or grant contract is or would be illegal.

4. The Federal Emergency Administration of Public Works is not a party to the bill.

5. The bill does not disclose by what right complainants seek equitable relief granted by way of the temporary restraining order.

6. The bill contains no prayer for the relief granted by way of the temporary restraining order against the closing of a loan and grant between this defendant and the P. W. A.

7. The allegations of fact in the bill do not sustain the relief granted.

8. There is no equity in the bill.

9. Said temporary restraining order was granted without compliance with the statutory provisions governing such orders.

Wherefore, premises considered, the defendant prays that the Court will enter an order dissolving and vacating said temporary restraining order.

W. H. Mitchell,
Solicitor for Defendant City of Florence

Service acknowledged,
Forney Johnston,
Of Counsel for Plaintiffs.

Jan. 28th, 1935.

## MOTION OF CITY OF SHEFFIELD TO DISSOLVE TEMPORARY RESTRAINING ORDER

Filed January 28th, 1935.

In the United States District Court
For the Northeastern Division of the Northern District of Alabama.

George Ashwander, et al.,
Plaintiffs.

vs.

City of Florence,
City of Sheffield,
City of Tuscumbia, et al.
Defendants.

No. 355—In Equity

Now comes the defendant, City of Sheffield, a municipal corporation, by its solicitors, and moves the Court to dissolve and vacate the temporary restraining order heretofore entered in this cause, on to-wit, the 9th day of January, 1935, enjoining and restraining these and other defendants from accepting any loan or grant from the Federal Emergency Public Works Administration, and the defendant sets down and assigns the following grounds for said motion:

1. Said temporary restraining order was improvidently granted.

2. It does not appear by the bill that this defendant is about to conclude any loan or grant contract with the Federal Emergency Administration of Public Works.

3. It does not appear by the bill, as a matter of fact, that such loan or grant contract is or would be illegal.

4. The Federal Emergency Administration of Public Works is not a party to the bill.

5. The bill does not disclose by what right complainants seek equitable relief granted by way of the temporary restraining order.

6. The bill contains no prayer for the relief granted by way of the temporary restraining order against the closing of a loan and grant between this defendant and the P. W. A.

7. The allegations of fact in the bill do not sustain the relief granted.

8. There is no equity in the bill.

9. Said temporary restraining order was granted without compliance with the statutory provisions governing such orders.

Wherefore, Premises Considered, the defendant prays that the Court will enter an order dissolving and vacating said temporary restraining order.

Stockton Cooke, Jr.
Solicitor for Defendant Sheffield, Ala.

Service acknowledged, January 28, 1935
Forney Johnston,
Of Counsel for Plaintiffs.

## MOTION OF CITY OF TUSCUMBIA TO DISSOLVE TEMPORARY RESTRAINING ORDER

Filed January 28th, 1935.

In the United States District Court
For the Northeastern Division of the Northern District of Alabama.

George Ashwander, et al.,
Plaintiffs,
vs.
City of Florence,
City of Sheffield,
City of Tuscumbia, et al.
Defendants.
} No. 355—In Equity

Now comes the defendant, City of Tuscumbia, a municipal corporation, by its solicitor, and moves the Court to dissolve and vacate the temporary restraining order heretofore entered in this cause, on to-wit, the 9th day of January, 1935, enjoining and restraining these and other defendants from accepting any loan or grant from the Federal Emergency Public Works Administration and the defendant sets down and assigns the following grounds for said motion:

1. Said temporary restraining order was improvidently granted.

2. It does not appear by the bill that this defendant is about to conclude any loan or grant contract with the Federal Emergency Administration of Public Works.

3. It does not appear by the bill, as a matter of fact, that such loan or grant contract is or would be illegal.

4. The federal Emergency Administration of Public Works is not a party to the bill.

5. The bill does not disclose by what right complainants seek equitable relief granted by way of the temporary restraining order.

6. The bill contains no prayer for the relief granted by way of the temporary restraining order against the closing of a loan and grant between this defendant and the P. W. A.

7. The allegations of fact in the bill do not sustain the relief granted.

8. There is no equity in the bill.

9. Said temporary restraining order was granted without compliance with the statutory provisions governing such orders.

Wherefore, Premises Considered, the defendant prays that the Court will enter an order dissolving and vacating said temporary restraining order.

John E. Delony, Jr.
Solicitor for Defendant City of Tuscumbia

Service acknowledged, January 28, 1935.
Forney Johnston,
Of Counsel for Plaintiffs.

## MEMORANDUM OPINION ON MOTION TO DISSOLVE RESTRAINING ORDER.

Filed February 11, 1935,

In the District Court of the United States
For the Northeastern Division of the Northern District
of Alabama.

George Ashwander, et al.,
Plaintiffs,
vs.
Tennessee Valley Authority, et al.,
Defendants.
} In Equity No. 355.

W. I. Grubb, District Judge:

1. Section 2 of the National Recovery Act authorizes the appropriation of government money, as a loan or grant, for the construction of a municipal electric light plant, and is constitutional under the right given Congress to raise money by taxes, for the general welfare; the purpose being to reduce general unemployment thereby. **Missouri Utilities Co. v. City of California, 8 Fed. Supplement 454.**

2. An Alabama municipal corporation, under the Carmichael Act (Acts 1933 Ex-Session Page 100), as construed by the Supreme Court of Alabama in the case of Oppenheim vs. City of Florence, 155 Southern Reporter 859, has authority to issue and sell its bonds for the construction of an electric light plant to the P. W. A., provided they are not general obligations of the municipality, creating an excess in its constitutional debt limit.

3. The P. W. A. was an authorized lender, and the

municipal corporations were authorized borrowers, for that purpose.

4. The illegality, if any, lies in the claimed disability of the T. V. A. to engage in the business of creating and disposing of electric current within the State of Alabama, in a manner having no relation to any constitutional power, and the question is whether this claimed illegality extends to the loan or grant of government money to the municipal corporation through the P. W. A., so as to make such a loan or grant illegal and void and subject to be restrained by a private utility injured by it.

5. If the T. V. A. has the right to engage in the business of making and selling electric current in Alabama to the municipal corporations, for final distribution to consumers, the P. W. A. has the right and power to loan to the municipal corporations money to construct distributing plants for electric power to be furnished by the T. V. A. to them.

6. If the T. V. A. is without power to engage in the business of making and disposing of electric energy in Alabama to the municipal corporations, for the reason named, the court must, then, determine whether that illegality infects the proposed loans by the P. W. A. to the municipal corporations with illegality.

7. The evidence shows that the P. W. A., in making the loans, knew that the proceeds of the loans were intended to be used by the municipal corporations, to construct distributing plants for the purpose of handling the electric energy, to be furnished to them by the T. V. A. in competition with private electric utilities in Alabama, and to reduce rates.

8. Further, the P. W. A. and the T. V. A. were each agencies of the United States, and the money loaned or to

be loaned by the P. W. A. was the money of the United States, and the acts of the T. V. A., in competition with the private electric utilities, were the acts of the United States.

9. Eliminating the alphabetical governmental branches, it is as if the United States was illegally engaging in the production and distribution of electric energy, and, in aid of the conduct of the illegal business, was seeking to loan to the municipal corporations, money, knowing it was to be used by them in the construction of distributing plants, for the disposal of the production which the T. V. A. created and disposed of illegally.

10. If the T. V. A. had the right to engage in the general business of creating and selling electric energy in Alabama, its competition, in so doing, with private utilities, therein, would not furnish them a ground of legal complaint. Lawful competition by a government agency with a private utility is no wrong, and, if the doing of the business was authorized, the competition could not be restrained. **Frost vs. Oklahoma Corporation Commission, 278 U. S. 515; City of Campbell vs. Arkansas and Missouri Power Co., 55 Federal (2) 560.**

11. If, however, engaging in the business by the government or its agency was unlawful, and so subject to be restrained by private utilities injured by the illegal competition, another agency of government intending to lend money to the municipal corporation for the express and known purpose of enabling it to build an electric distributing plant to handle the electrical output of the T. V. A. in competition with the private utility, could likewise be restrained by the injured private utility from making the loan. The T. V. A. and P. W. A., though separate

legal entities, are each and together the United States government. Hence, the United States, as T. V. A., would be engaged in the unlawful business, and the United States, as P. W. A., would be lending the municipal corporations money, with the knowledge and purpose that it was to be used by the municipal corporations in constructing distributing plants to aid the T. V. A. in an illegal business, and a business that would be and was intended to be, in direct competition with the private utilities, and they would be subjected to direct injury by such unlawful competition.

12. The right of a stockholder of a private utility, so injuriously affected, to restrain the lending of the money for such a known purpose by the P. W. A., after demand and refusal by the private utility to do so, would be on the same basis as that of a stockholder seeking on behalf of his corporation, to restrain the T. V. A. from engaging in the claimed illegal and injuriously competitive business, after such demand and refusal. **Dodge vs. Woolsey, 18 Howard 331-344-5.**

13. The resulting conclusion is that if the T. V. A. is to be enjoined from continuing to engage in the business of making and selling electric energy in Alabama, using distributing plants to be constructed by municipal corporations for that intended purpose, with the proceeds of loans or grants from the P. W. A., made by it with like knowledge and purpose, then the making of such loans and grants by the P. W. A. to the municipal corporations is equally subject to be restrained.

14. The right of plaintiffs to the continuance of the restraining order preventing the loans by the P. W. A. to the municipal corporations can be determined only after the completion of the hearing in the main case, and by

the result of it, as to whether or not the T. V. A. is found to be engaging lawfully or unlawfully in the electrical power business.

## ORDER CONTINUING CAUSE.

Filed March 2nd, 1935.

In the District Court of the United States
For the Northeastern Division of the Northern
District of Alabama.

George Ashwander, et al
Complainants,
vs.
Tennessee Valley Authority, et al
Respondents.

In Equity
No. 355

### Order

The taking of testimony and oral argument in this cause having been completed on, to wit: the 22nd day of February, 1935, and the Court now having under consideration the findings of fact in this cause, it is ordered, adjudged and decreed that this cause be and the same is hereby continued under advisement by this Court until the next succeeding term of Court.

W. I. Grubb
District Judge

Done this 27th day of February, 1935.

## CORRECTED ORAL OPINION OF THE COURT.

Filed February 26th, 1935.

In the District Court of the United States
For the Northeastern Division of the Northern
District of Alabama.

George Ashwander, et al.,
Plaintiffs
vs.
Tennessee Valley Authority, et al.,
Defendants.
} No. 355—In Equity.

Friday, February 22nd, 1935, Afternoon Session.

The Court: (Judge Grubb) The law in this case was settled on the motion to dismiss for want of equity. I don't mean settled for good, but settled as far as this case is concerned, in the District Court. It was settled in this way: That under the 10th Amendment, or regardless of it, the Government of the United States would have no right, within the limits of a State, to conduct any private proprietary business unless it did so in a way that was tied to some express or implied constitutional grant of power. If it was tied to such a grant of power, then the power carried with it the proprietary business and the right to operate it on the part of the Government in the State, and, in fact, the Government has a paramount right over the State in that case. Therefore, the question that was left open was whether the Government was operating a proprietary business and whether it was attached to any specific grant of power, express or implied, under the Constitution.

Those are the questions of fact we are trying, as I understand it, on this trial. I told counsel that, while the bill contained many things, the only one that I would regard would be the validity of the contract or transaction between the Alabama Power Company, which the preferred stockholders are assailing, and the Tennessee Valley Authority. That is to say, the contract conveying the transmission lines, and making certain arrangements about the interchange of power. January 4, 1934, I believe, was its date; and also in connection with it, the contract of August 9th, which was the option to buy certain distribution systems, which was not exercised by the T. V. A., but which, it seems to me, throws light on their purpose in buying the transmission lines; and it seems to me clear from all the evidence, and from the nature of the transaction itself, that the T. V. A. purchased what they did from the Alabama Power to enable it to conduct the same kind of business that the Alabama Power theretofore did with that same equipment, transmission, and so forth, i. e., the business of a utility, making and distributing electric energy. Now, its right to do that, is dependent upon a showing that in the conduct of some granted constitutional power, it needed this electric power, and that either there was a surplus, or that in some other way, the electric power was connected with the constitutional power; so that it would have the right not only to make it but to sell it. The attempt has been in this trial to show by the plaintiff, first, that the transaction with the Alabama Power was one that put it in the business of operating a utility business in Alabama; and, second, that there was no grant of power to which that business could be attached. And on the other hand, the defendants have controverted the first question, and, controverting the second question, they offer evidence

tending to show that it was connected with either the power of navigation or with interstate commerce or the power of national defense.

There is no doubt, under my ruling on the motion, and as I see it under the law, that if it is attached to any one of those powers, the making and selling and distributing, both wholesale and retail, of electric energy, is legal. On the other hand, if it cannot be attributed to any one of those powers, then the Tennessee Valley Authority would be in the attitude of conducting for the Government, since it is a governmental instrumentality, a completely owned subsidiary of the Government, a business in the State of Alabama, in a proprietary way and without any power to attach that business to; and in that case it would be an unauthorized ultra vires business and could not be conducted legally.

Now, whether the Act creating the T. V. A. is unconstitutional or not is a matter of debate which I don't find it necessary to pass on, either on the proposition of the delegation of powers beyond what is legislatively proper or what is constitutional, or whether on the question of authorizing a business to be conducted, that the Constitution does not authorize Congress to authorize this corporation to conduct. I haven't looked into the question of nondelegable powers and don't pass on it. As to the other, it seems to me that the fair construction of the Act might limit the right of the Tennessee Valley Authority to sell any energy that was not surplus energy, and it has that authority under the decision of the Supreme Court, as I understand it. It has a right to sell the surplus energy defined to be the energy over and above what the T. V. A. creates for the use of some one of its granted constitutional powers, and used for that purpose; for instance, actuating

of the locks with reference to navigation, the lighting of villages, or many other things of that kind, that give it the right to use electrical energy. If there is a surplus, recognizing the impossibility of making the exact amount of electric power to cover the needs, it has an implied right to sell any power created over and above that, provided that surplus is legitimately created; that is, created in the exercise of a bona fide effort to only make such power as is needed to carry on the constitutional power, either national defense or navigation, or perhaps others.

Now, I get the idea from the proof, that the directors in the administration of the affairs of the Tennessee Valley Authority, have not planned to dispose of merely a surplus of that kind, but, on the contrary, that they have so treated any surplus created by them of any size and without any regard to its being created for the physical needs, and have done so with the expectation of disposing of it either in the way of furnishing an example as to how cheap power could be made when the Government made it, or in aid of the social experiment that is being conducted in the Valley, or in order to reimburse the treasury by marketing power having no physical or functional relation to regulation of navigation or national defense.

I believe that the evidence shows that there is no substantial relation between the power created and disposed of and intended to be disposed of under the plan of the Tennessee Valley Authority, and a surplus that is merely over what is needed to carry the Government operation on physically; and that cannot be made exact, and is, therefore, an approximation. I don't believe that the idea of the Tennessee Valley Authority in making the power and planning like they have planned, is that. I think their idea is that anything is a surplus which is over and above

what they actually use, and that that gives them the right to generate what they see fit, and, in fact, to plan an independent utility system, permanent in character and supported by twenty or thirty year contracts before the governmental use is defined.

As I see it, it would be essential to be shown either that this power that is being disposed of, or intended to be disposed of, was actually needed for some of these constitutional functions or that it was the excess over and above what was so created by that function, and the amount used, and that what was created in excess, was created in good faith and not with an intention to make a different disposition of it while it was being created and when it was being distributed.

So, that being the case, it seems to me that the evidence does show that it isn't a surplus and that it is not to be attributable to any constitutional power; and, therefore, it leaves the Tennessee Valley Authority, in its disposition of it, in the attitude of a proprietary utility, just as the Alabama Power Company was before it made this contract, and, therefore, that its doing so is ultra vires of its right as a corporation, and that its directors in so doing, acted ultra vires of their charter, and in violation of the limitations on the power of Congress.

The plaintiffs must assume all injury from legal competition. That is something they would have to accept without legal redress. But, if the Tennessee Valley Authority had no right to engage in the business of making, and transmitting, and distributing, either through themselves or these municipal corporations, electric energy as a business, then that competition arising out of an illegal business could be complained of by the Alabama Power Com-

pany, and in the event it refused to do so, by its stockholders.

With reference to the restraining of the making of the loans offered by the P. W. A. to the municipal corporations, the P. W. A. was authorized to lend Government money to municipal corporations with which to build or buy distributing plants for electric energy, under the general welfare clause, and in the interest of re-employment. The law of Alabama authorized the municipal corporations to receive such loans for such purpose. If there is any infirmity in the loan agreement, it arises from the fact that the T. V. A. is a party to the loan transaction in that the loans are to be based on contracts for T. V. A. power and are granted in part in order to supply a market for T. V. A. The record shows that the T. V. A. was instrumental in procuring the P. W. A. to agree to make the loans, and that their purpose was known to the T. V. A., the P. W. A. and the municipal corporations, when they were agreed to be made. The municipal corporations, to secure the loans, agreed to distribute the energy of the T. V. A., and sell it at prices, satisfactory to the T. V. A., to consumers, and this was known to the P. W. A. and was a part of the consideration which induced it to grant the loans. If all parties to the tripartite loan transaction entered into it, knowing that the money was to be used to aid the T. V. A. in disposing of its energy to consumers in violation of law, through the municipal corporations, then, the loan agreement would have been made in aid of an illegal business, and with that purpose on the part of the lender, the borrowers, and the offending T. V. A.; and its performance should be restrained by reason of the illegality. If the T. V. A. was illegally conducting a utility business, and the loans were to be made to aid it, with the knowledge

and intent of all the parties, the loans should be restrained where intended to construct systems to purchase T. V. A. power under the circumstances above stated.

I have found that the T. V. A. was illegally engaged in the business of making and selling electric energy, and that the loans were made to aid it; whether the T. V. A. and P. W. A. are considered as one entity, the United States, or separate entities, which had agreed together and with the municipal corporations, and with knowledge, the same result would obtain. The final decree should permanently enjoin the making of the loans, where employed or to be employed for construction of a distribution system in furtherance of the purchase of T. V. A. power and definitely predicated on T. V. A. as the source of power.

## FINAL DECREE.

Filed in open court this March 2nd, 1935.
W. I. Grubb, District Judge.

In the United States District Court
For the Northeastern Division of the Northern District of Alabama

George Ashwander, et al,
Plaintiffs,
vs.
Tennessee Valley Authority, et al,
Defendants.
No. 355
In Equity

This cause came on again to be heard for final decree on the pleadings and proof, and, upon consideration, it is by the Court adjudged, ordered and decreed as follows:

(1) This suit is entertained as a stockholders' suit, and

it is considered and adjudged by the court that the plaintiffs are entitled to the relief hereby awarded.

(2) The agreement between Tennessee Valley Authority, Alabama Power Company, and others, dated January 4, 1934, as set forth in Exhibit No. 5 to the original bill of complaint herein, as amended by the agreement dated February 13, 1934, as set forth in Exhibit No. 5-a attached to the original bill of complaint, and the supplemental agreement evidenced by telegrams between David E. Lilienthal and W. L. Willkie dated May 24, 1934, and May 25, 1934, in evidence in this cause, by which the defendant Alabama Power Company agreed to transfer to the Tennessee Valley Authority the Athens, Belle Mina and other facilities in Limestone County, Alabama; be and the same are hereby adjudged to be in furtherance of illegal proprietary operations by Tennessee Valley Authority, and are severally annulled, in so far as the same pertain to Alabama Power Company, and the Alabama Power Company is enjoined and restrained from making transfer to Tennessee Valley Authority of the lines, systems and properties therein respectively described or referred to.

(3) The proof showing that the defendant Tennessee Valley Authority is engaged in the construction of a lock and dam on the Tennessee River at or in the vicinity of the site known as Dam No. 3 or the General Joe Wheeler Dam on lands owned by the defendant Alabama Power Company, described or referred to in Exhibit "C" to the said contract of January 4, 1934, and this decree pretermitting the question of the validity of the Tennessee Valley Authority Act in so far as not conflicting with the relief hereby awarded, as well as the scope, validity and effect of those provisions of said Act purporting to authorize the Tennessee Valley Authority to construct dams

upon the Tennessee River and its tributaries, it is adjudged that it is an equitable condition to relief herein and it is adjudged, ordered and decreed that Alabama Power Company take no steps by suit or otherwise to dispossess or to interfere with the work of construction by Tennessee Valley Authority of said dam for a period of four months from the date of this decree; or, in the event of an appeal from this decree by Tennessee Valley Authority, until four months after the final determination of such appeal (including final action on any application for writ of certiorari by Tennessee Valley Authority). The Alabama Power Company shall not be deemed to have waived any right in relation to the subject matter of this paragraph by virtue of its yielding obedience to this decree.

(4) It is considered by the court that the provisions of this section constitute reasonable conditions to the granting of equitable relief by way of injunction, and it is, therefore, ordered that for the purpose of avoiding hardship to existing customers of the Tennessee Valley Authority and Alabama Power Company now served by means of the interchange arrangements provided by said contract of January 4, 1934, the interchange provisions of said contract are continued in effect for a period of four months from the date of entry hereof, or if appeal be taken, until four months after final disposition of any appeal or the final disposition of any application for writ of certiorari; provided, however, that in the event the Tennessee Valley Authority shall during such provisional period desire to extend its service within the State of Alabama by extending its lines or selling or delivering electricity to or for distribution to any customer within the State of Alabama not receiving Tennessee Valley Authority current on the date hereof (except additional in-

dividual customers not served by Alabama Power Company which may be directly connected with the Tennessee Valley Authority lines actually constructed and in operation on said date); then in such event the Tennessee Valley Authority shall first make application to this court for consent thereto, after giving three days' notice to the Alabama Power Company and to the plaintiffs, the said Alabama Power Company and Tennessee Valley Authority in open court agreeing that so long as they respectively elect to continue such interchange arrangement in effect the conditions above stated shall be observed, without prejudice by reason of said qualified consent or having yielded to the conditions herein stated.

The foregoing provision is applicable only so far as it involves a change of status brought about by this decree, to be determined on application as aforesaid in the event of objection being made by Alabama Power Company after notice by Tennessee Valley Authority to Alabama Power Company of such proposed action.

In the event that either the Alabama Power Company or the Tennessee Valley Authority should elect to terminate this modus operandi they shall give ninety days' notice of such intention and file a copy of said notice with the Clerk of this Court.

This cause is reserved for such modification of the time or details as to the provisional or temporary relationships herein authorized as may on application to the court by any party hereto or upon its own motion seem meet and proper for the protection of existing public service from undue interruption pending any adjustment of such service to the requirements of this decree.

(5) The defendant municipalities, all of which or the inhabitants of which were supplied or served with elec-

tricity by Alabama Power Company on and prior to January 4, 1934, are hereby enjoined and restrained from entering into or performing any contract with Tennessee Valley Authority for the purchase from the latter directly or indirectly of energy to be created or acquired and transmitted or delivered by Tennessee Valley Authority, and from accepting or expending any loan or funds received from the Tennessee Valley Authority, the Federal Emergency Administration of Public Works or any other agency of the United States, for the purpose of constructing a public distribution system for the distribution of electric power to be supplied by Tennessee Valley Authority, directly or indirectly.

As to the City of Athens, the present method of supply by or for the account of Tennessee Valley Authority may continue provisionally and pending readjustment to the requirements of this decree and for the term authorized under Section (4) hereof.

This cause is reserved for such modification of the prohibition of this paragraph on application by the defendant municipalities as to the Court may seem appropriate.

(6) It is further adjudged, ordered and decreed that the agreement between Alabama Power Company and Electric Home and Farm Authority, Inc., dated May 21, 1934, attached as Exhibit No. 10 to the original bill of complaint, be and the same is hereby annulled, except to the extent necessary or appropriate to liquidate the items already cleared under said agreement, and with the exception stated, the Alabama Power Company is enjoined and restrained from acting as agent or agency for said Electric Home and Farm Authority, Inc., in the promotion of the sale of electric appliances and in the discounting of customer paper purchased or proposed to be purchased or

discounted by said Electric Home and Farm Authority, Inc.

(7) The scope of the consideration and decree herein is limited to the issues and matters covered affirmatively by this decree, and this decree is, accordingly, without prejudice as to any and all other matters.

(8) It is adjudged and decreed that the costs of this suit incurred at the instance of plaintiffs be taxed against the defendant Alabama Power Company and that the costs incurred at the instance of the respective defendants other than Tennessee Valley Authority and Electric Home and Farm Authority, Inc., be paid by them respectively, provided that the costs taxed against the individual defendants may be paid by Tennessee Valley Authority.

(9) It is further adjudged and decreed that the plaintiffs be and they are hereby entitled to recover of the defendant Alabama Power Company the reasonable and necessary costs and expenses of the plaintiffs in this suit not herein taxed against the defendants, including the preparation and presentation thereof, together with reasonable counsel fees in the premises. In the event that the matter of such costs and expenses shall not be agreed upon between the plaintiffs and the Alabama Power Company, either of said parties may apply to this court for the determination thereof, and this cause is accordingly reserved for such purposes.

And to this decree the respective defendants in open court duly reserve an exception.

Given, this 2nd day of March, 1935.

W. I. Grubb,
U. S. District Judge.